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No. 99-1041

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1999

BILL PRYOR, in his official capacity as Attorney General for the State of Alabama and his agents and successors; and **ELLEN BROOKS**, in her official capacity as Montgomery District Attorney;

Petitioners,

v.

SUMMIT MEDICAL ASSOCIATES, P.C.; BEACON WOMEN'S CENTER; NEW WOMAN, ALL WOMEN HEALTH CARE; and **WILLIAM H. KNORR, M.D.,** on behalf of themselves and their patients' seeking abortions;

Respondents.

On Petition for Writ of Certiorari to the
United State Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF UNDER RULE 37(2)(b) WITH ATTACHED BRIEF AMICUS CURIAE OF JAMES J. CLANCY (MEMBER OF THE SUPREME COURT BAR) IN SUPPORT OF NEITHER PARTY, SUGGESTING REVERSAL OF THE JUDGMENT FOR RESPONDENTS FOR LACK OF SUBJECT MATTER JURISDICTION; PURSUANT TO THE AUTHORITY OF THE 11TH AMENDMENT, *WATSON V. BUCK*, 313 U.S. 387 (1941); *YOUNGER V. HARRIS*, 401 U.S. 37 (1971); *HUFFMAN V. PURSUE, LTD.*, 420 U.S. 592 (1975); AND THE *YOUNGER - HUFFMAN* ABSTENTION DOCTRINE.

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February 2, 2000

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QUESTION PRESENTED

I

Whether the Judgment for the Respondents must be reversed for lack of **Article 3, §2** Subject Matter Jurisdiction due to failure of the Trial Court to make the Jurisdictional Findings of Fact required by the ***Younger*** **Abstention Doctrine**, ***Younger v. Harris***, 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971), and the ***Huffman*** **Abstention Doctrine**, ***Huffman v. Pursue, Ltd.***, 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975) ?

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NOW COMES James J. Clancy, Attorney at Law, and a member of the Supreme Court Bar, to move this Court for leave to file a Brief Amicus Curiae, in support of neither of the Parties, suggesting a summary reversal of the Judgment for Respondents under *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (March 4, 1998), upon the grounds of lack of subject matter jurisdiction, pursuant to the 11TH Amendment; *Watson v. Buck*, 313 U.S. 387 (1941); *Younger v. Harris*, 401 U.S. 37 (1971); *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); and the *Younger* - *Huffman* **Abstention Doctrines** for failure of the Trial Court to make the jurisdictional findings of fact required by *Younger* and *Huffman*, see, in particular, *Huffman*, 420 U.S. at 611-613 (last three [3] paragraphs of Chief Justice Rehnquist's opinion).

Petitioner Pryor has not responded to the request for a written consent to the filing. Respondents do not consent. See correspondence at **Appendix A** to this Brief Amicus Curiae. [1]

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[1] No counsel for a party authorized this Brief in whole or in part, and no person or entity, other than the Amicus Curiae, made a monetary contribution to the preparation or submission of this Brief.

As noted by the Trial Court below, the **11TH Amendment** issue presents a case of first impression in the partial birth abortion area. See ***Summit Medical Associates, P.C., et al. v. Fob James, Jr., et al.***, 984 F.Supp. 1404 at 1420 (Jan. 26, 1998).

In the Trial Court below, Attorney General Pryor pleaded the **11TH Amendment** and the ***Younger*** **Abstention Doctrine** as a jurisdictional bar which precluded the Federal Court from asserting subject matter jurisdiction over the Plaintiff's Complaint as filed. This Motion of Amicus Curiae James J. Clancy is made necessary because the issue of Federal power (i.e., subject matter jurisdiction under the **11TH Amendment**), which was the paramount issue raised by the Alabama Attorney General in the Court below, is not discussed in the Attorney General's Petition for Writ of Certiorari.

BRIEF OF AMICUS CURIAE JAMES J. CLANCY IN SUPPORT OF NEITHER PARTY.

I INTEREST OF AMICUS CURIAE: BACKGROUND.

Amicus learned of the Alabama Attorney General's **11TH Amendment** challenge to Federal jurisdiction and the 11TH Circuit's Opinion in ***Summit Medical Associates, P.C.; et al. v. Pryor, et al.*** No. 98-6129 (July 15, 1999) from a subscription copy of **68 U.S.L.W. at 1079**, dated August 10, 1999 and requested his computer operator to obtain a copy from the Internet.

On August 18, 1999, Amicus received a copy of the opinion from the (BNA) Internet and made four phone calls to the Attorney General's Office in Montgomery, Alabama (334-242-7300). Upon inquiry, he was informed that Bert Jordan in Birmingham was one of the attorneys for Attorney General Pryor on appeal.

On September 2, 3, 10, 11 and 14, 1999, Amicus phoned Bert Jordan (205-870-0555). On September 14TH Amicus had a lengthy (44 minute) phone conversation with Jordan in which the importance of the Alabama Attorney General's 11TH Amendment challenge as a case of first impression was discussed at great length. Jordan informed Amicus that he was one of the attorneys on the case, and that a petition for rehearing en banc would be filed.

On October 18, 1999, Amicus had a second lengthy (43 minute) phone conversation with Jordan and was informed that a petition for certiorari would be filed on or about November 10, 1999 and that the matter of filing a petition for certiorari was being discussed, but it was not known who would prepare the petition.

During the above two lengthy phone conversations with Jordan, Amicus expressed his interest in the Alabama Attorney General's Petition for Certiorari and his convictions: (1) that the ***Summit*** case should be reversed upon the authority of ***Younger v. Harris***, supra, and ***Huffman v. Pursue, Ltd.***, supra, because they were squarely in point on the **11TH Amendment** issue and were controlling; and (2) that Amicus had been attempting to raise that issue in the U.S. Supreme Court since 1975 (25 years); and was presently trying to do so in a case known as ***In Re Clarence Murphy***, No. 98-1442, etc.; and also explained most of the contentions of Amicus regarding his reason why the ***Younger*** and ***Huffman*** **Abstention Doctrines** were controlling.

On Saturday, January 15, 2000, Amicus learned from an ***L.A. Times*** news article that this Court had granted a Writ of Certiorari in ***Stenberg v. Carhart***, No. 99-830. On Monday, January 24, 2000, Amicus was informed by the Alabama Attorney General in Montgomery (334-242-7445 [Michael Jackson]) that Attorney Jay Sekulow in Washington, D.C. was preparing the Petition for the Alabama Attorney General. On

January 27, 2000, Amicus received a fax copy of the Petition from Attorney Sekulow and learned for the first time that neither the **11TH Amendment** issue nor the ***Younger* Abstention Doctrine** issue was raised in the Petition for Writ of Certiorari even though the **11TH Amendment** issue was the principal issue urged by the Attorney General in the Trial Court. On January 28, 2000, Amicus faxed a request for consent to filing an Amicus Curiae Brief for the benefit of the Court on the **11TH Amendment** and the ***Younger* - *Huffman* Abstention** issues. See **Appendix A** to the Amicus Curiae Brief.

II. INTEREST OF THE AMICUS CURIAE: STATEMENT OF THE CASE OF CLIENT CLARENCE F. MURPHY, IN THE U.S. SUPREME COURT IN CASE NO. 98-1442.

Planned Parenthood wishes to construct an abortion clinic in Bettendorf, Iowa. The **Bettendorf Zoning Ordinance** allows abortion clinics on property in a C-5 Zone.

Had Planned Parenthood purchased a C-5 Zoned property, it would not have had a zoning problem. Instead, it chose a property in a PUD Zone within 200 feet of three relatively new residential apartment complexes and submitted an application for approval of a C-5 Zoning Ordinance.

Murphy and two other adjacent apartment owners within 200 feet of the Planned Parenthood property made a successful statutory protest (**20% Rule**) against the zone change, pursuant to **Bettendorf Zoning Code, §24.2 and §24.4** (see at **Appendix B** to this Amicus Brief, Murphy's Iowa District Court Petition for a Declaratory Judgment filed on December 7, 1999 as a foil to compensate for U.S. District Judge Wolle's refusal to allow Murphy to litigate Judge Wolle's egregious rulings in the Federal Court), which precluded the Bettendorf City Council from adopting a C-5 Zoning Ordinance unless the

City Council voted 6-1 in favor of the Zoning Ordinance. The City Council aligned itself with the protesters and on March 19, 1996 voted 5-1 to reject the C-5 Zoning Ordinance. That quasi-judicial order was not appealed and is now final and ***Res Judicata*** under Iowa Law.

Zoning Rights are "**Vested Rights**" under Iowa Law and the **Iowa Constitution**. The 8TH Circuit Court of Appeals has so held in its decision in ***Nemmers v. City of Dubuque, Iowa***, 716 F.2d 1194 (1983).

Under Iowa case law, a city council's action on a zone change request is broadly defined to be a "judicial function" which can be appealed by writ of certiorari to the Iowa District Courts, see ***Montgomery v. Bremer County Board of Supervisors***, 299 N.W.2d 687 at 692 (Iowa Supreme Court 1980). If an appeal is not filed within 30 days, the city council's actions become final, in which case, under the **11TH Amendment** and ***Huffman v. Pursue Ltd.***, 420 U.S. 592 at 606, fn. 18 and 19 and the progeny of ***Huffman***, and ***Plough v. West Des Moines Community School District***, 70 F.3d 512 at 516-517 [CA 8TH 1995]), the city council's quasi-judicial order is both final and ***Res Judicata***.

On March 21, 1997, one year and two days after the City Council's rejection of the C-5 Zoning Ordinance, Planned Parenthood filed a Civil Rights Action under **42 U.S.C. §1983** in the U.S. District Court, pleading what is, in essence, an appeal from the March 19, 1996 decision of the Bettendorf City Council which considered essentially the same issues and facts and denied the application for the C-5 Zoning Ordinance in a quasi-judicial order which was not appealed to the Iowa District Court. The federal complaint: **(1)** did not name the three adjacent apartment owners who made the successful statutory protest as defendants; and **(2)** demanded attorney's fees under **42 U.S.C. §1988**.

The City of Bettendorf filed a Summary Judgment Motion, pursuant to the ***Huffman*** **Abstention Doctrine** and the ***Res Judicata*** **Doctrine** which Judge Wolle egregiously denied.

Upon conclusion of the federal trial, Judge Wolle entered a judgment which purported to rezone the property from P.U.D. to C-5 Zoning and awarded very substantial attorney's fees to Planned Parenthood under **42 U.S.C. §1988** which would not have been available had an appeal been taken to the Iowa District Court following the denial of the C-5 Zoning Ordinance.

Murphy moved to intervene in the U.S. District Court immediately after the City of Bettendorf (***"parens patriae"***) announced its decision not to appeal, for the purpose of appealing U.S. District Judge Wolle's Judgement on **11TH Amendment**, the ***Huffman*** **Abstention Doctrine** and other jurisdictional grounds, including Judge Wolle's denial of the City's Summary Judgment Motion on its plea of ***Res Judicata***.

Judge Wolle: **(1)** ruled "cursorily" on Murphy's "extensive" pleadings that the Intervention Motion was "untimely"; **(2)** refused to address the merits of Murphy's right to mandatory intervention; and the **11TH Amendment**; ***Res Judicata***, and other Jurisdictional claims raised at the time of Murphy's Intervention Motion, and **(3)** refused to hear oral argument on the intervention and jurisdictional claims.

In the Court of Appeals below, Murphy sought judicial relief from Judge Wolle's arrogation of Federal Judicial Power in two forms: by the filing of a direct appeal and the filing of an original action (a verified complaint pursuant to a Petition for Writ of Mandamus) in the 8TH Circuit Court of Appeals, pursuant to 28 U.S.C. §1651(a).

In a highly unorthodox ruling, the Court treated the

Appellant's Opening Brief on the direct appeal and the original petition for a prerogative writ of mandamus, as though they had been consolidated and, in a brief single order, denied the petition for Writ of Mandamus without an opinion, and summarily affirmed Judge Wolle's Judgment, also without opinion. The Court of Appeals also denied a petition for rehearing and suggestion of a hearing en banc in each of the two cases.

Murphy contended in his Petition for Writ of Mandamus, pursuant to the U.S. Supreme Court's original jurisdiction: **(1)** that Planned Parenthood has not stated, and cannot state a **42 U.S.C. §1983** cause of action because it had an adequate remedy under Iowa procedure of judicial review by the Iowa District Court (see ***Allen v. McCurry***, 449 U.S. 90 at 100 [1980] and ***Parratt v. Taylor***, 451 U.S. 527 [1981]), and **(2)** that it is not entitled to attorney's fees under **42 U.S.C. §1988** because Iowa and other state courts do not customarily award attorney's fees in litigation involving an appeal from a denial of a C-5 zoning ordinance and application of the **Bettendorf "Protest" Ordinance**; and **(3)** where, as here, a separate **42 U.S.C. §1983** cause of action is pleaded and relied upon, it must be tried in the Iowa District Court because of the **11TH Amendment** bar, which has been pleaded; and **(4)** in any event, Judge Wolle's Judgment must be reversed because, at this state of the proceedings, the **11TH Amendment**, the ***Huffman*** **Abstention Doctrine** and the **Doctrines** of ***Res Judicata*** and ***Stare Decisis*** control the disposition of this case and mandate that the Federal Judgment must be vacated for lack of **Article 3, §2** subject matter jurisdiction.

Murphy contended he is entitled to a **Rule *Nisi*** pursuant to **28 U.S.C. §1651(a)** correcting the egregious refusal of both Courts to address the issue of "lack of **Article 3, §2** subject matter jurisdiction" under his **11TH Amendment** claim. See ***Steel Co. v. Citizens for a Better Environment***, 523 U.S. 83 (March 4, 1998) (duty to address the question of subject matter jurisdiction as the first order of business, and on its own motion,

if the parties to the lawsuit do not bring the matter to the trial court's attention); ***Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.***, 121 L.Ed.2d 605 at 610, 506 U.S. 139 (1993) (creating a new Rule of Court re the issue "lack of subject matter jurisdiction"); ***Wisconsin Dept. of Corrections v. Schacht***, 524 U.S. ___, 141 L.Ed.2d 364 at 375-378, No. 97-461 (June 22, 1998) (Associate Justice Kennedy's concurring opinion re the issue of "lack of subject matter jurisdiction"). See ***Kerr v. U.S. Dist. Ct.***, 426 U.S. 394 (1976); ***Will v. U.S.***, 389 U.S. 90 (1967); and **Supreme Court Practice**, *7TH Ed., Stern, Gressman, Shapiro, Geller*, **©1993** at page 495.

II (A) Adequate Relief Cannot Be Obtained by Murphy in Any Other Forum or from Any Other Court for the Following Reasons:

"Adequate Relief" in the above context means "giving notice to the U.S. District Courts and the U.S. Courts of Appeals in the 11 Circuits, that the ***Huffman*** **Abstention Doctrine is "Jurisdictional" and that the Planned Parenthood Civil Rights Action must be dismissed on those grounds where the *Huffman* test has not and cannot be met. This requires a reexamination of this Court's opinion and decision in *Huffman v. Pursue, Ltd.***, supra.

II (B) The Refusal of a Majority of Federal Courts to Acknowledge the "Jurisdictional" Aspect of the *Huffman* Abstention Doctrine Manifests a Need for Re-Examination of the *Huffman* Cases.

Murphy contends that the rule of law re lack of **Article 3, §2 subject matter jurisdiction under this Court's opinion in *Huffman v. Pursue, Ltd.*, supra, has existed for the past 24 years as an 11TH Amendment right; yet few of the federal courts consider themselves bound thereby. See in this regard, U.S. District Judge Myron H. Thompson's analysis at pages 17-18, infra.**

When faced with Murphy's lawful right to intervene as an indispensable party and to contest the U.S. District Court's actions (requiring the construction of an abortion clinic within 200 feet of his apartment complex) pursuant to Murphy's claim of lack of **Article 3, §2** subject matter jurisdiction under the **11TH Amendment**, the ***Huffman*** **Abstention Doctrine**, the ***Rooker-Feldman*** **Abstention Doctrine**, (***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 [1923] and ***Dist. of Columbia Court of Appeals v. Feldman***, 460 U.S. 462 [1983]), the ***Res Judicata*** **Doctrine** and the ***Stare Decisis*** **Doctrine**, both the U.S. District Court and the U.S. Court of Appeals for the 8TH Circuit dismissed such claims without an explanatory judicial opinion, in utter disregard of this Court's repeated admonitions that a federal court must rule on the jurisdictional issue as its first order of business.

Murphy submits that, in the light of what is said hereafter about the background of the rule of law expressed in ***Huffman v. Pursue, Ltd.***, supra, and the great harm which has resulted from this Court's having refused to "squarely" address the **11TH Amendment** jurisdictional aspect of the ***Huffman*** case, this Court should clarify the rule of law on "lack of **Article 3, §2** subject matter jurisdiction" in ***Huffman***.

III INTEREST OF THE AMICUS CURIAE: A RE-EXAMINATION OF *HUFFMAN V. PURSUE, LTD.*, 420 U.S. 592 (1975).

27 years ago (May 1973), the substantial federal question which controls this case; namely, the conflict between the subject matter jurisdiction of federal courts under the **14TH Amendment (42 U.S.C. §1983)** and **Article 3, §2** of the **U.S. Constitution**; and the subject matter jurisdiction of state courts under the **10TH** and **11TH Amendments** to the **U.S. Constitution**, was squarely before this Court in two forms: **(1)** in ***Lawrence S. Huffman v. U.S. District Court for the Northern District of Ohio, Western Division***, No. 72-1613

Misc., being a Motion for Leave to file a Petition for Writ of Mandamus and Petition for a Writ of Mandamus as to this Court's original jurisdiction pursuant to **28 U.S.C. 1651(a)**; and **(2)** in ***Lawrence S. Huffman v. Pursue, Ltd.***, No. 73-296. which is now reported as 420 U.S. 592, supra, being an appeal from an adverse judgment of a three judge court with respect to the constitutionality of the Ohio Public Nuisance Statute as then required by this Court's mandatory appellate jurisdiction under **28 U.S.C. §2281** (repealed in 1976).

Amicus Curiae James J. Clancy [2/] was Counsel of Record for Allen County, Ohio Prosecutor Huffman (hereinafter "Huffman") in Huffman's two cases in 1975. A duplicate copy of the Jurisdictional Statement and the Petition for Rehearing in ***Huffman v. Pursue, Ltd.***, No. 73-296 and the Motion for Leave to File a Petition for Writ of Mandamus and Petition for Writ of Mandamus in ***Huffman v. U.S. District Court***, No. 72-1613 Misc. was filed with this Court as "Exhibits 1A. 1B and 1C" to the Petition for Writ of Mandamus in ***In Re Murphy***, No. 98-1442, with a request that this Court take Judicial Notice of such pleadings.

III (A) The Critical Status of the Ohio State Court's Jurisdiction and Huffman's Dilemma.

The final judgment which closed the Cinema I Theater as a Moral Public Nuisance in the Ohio public nuisance case was filed on November 30, 1972. The attorneys for the theater transferred the ownership to a newly formed Corporation and on the next day filed a civil rights action in the U.S. District Court attacking the constitutionality of the Ohio Public Nuisance Statutes (which required review by a three judge federal court).

[2/] Amicus Curiae James J. Clancy was also counsel of Record for Clarence F. Murphy in his Petition for Writ of Mandamus in ***In Re Murphy***, U.S. Supreme Court No. 98-1442, October Term 1998.

On the date the action was filed, the Common Pleas Court in Lima Ohio still had statutory jurisdiction for 30 days for the purpose of considering post trial motions, the filing of a notice of appeal and motions for attorneys' fees, etc.

In the two *Huffman* cases which were before this Court, Huffman made a determined effort to focus the Court's attention on "Subject Matter Jurisdiction" which, according to this Court's prior precedents was and is always to be the first order of business (see *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 [March 4, 1998]) and properly belonged in the Ohio State Court System. This tactic was absolutely essential to the prosecutor's success, so that he could get a definitive appellate ruling on the "closure" procedure by the Ohio Supreme Court in this *Huffman* "test case" (which ruling would also be available as "precedent" in other State Public Nuisance Abatement cases which were then being developed using the civil abatement process, and the Time and Motion Study and Film Continuity Study as real evidence for the prosecution, and the potential of an award of attorney's fees to cover the cost of abatement and closure of the Ohio Moral Public Nuisance).

III (B) Abdication of this Court's Primary Duty re Jurisdiction in *Huffman*– Ohio's Concern re Moral Depravity, an Important State Interest under the 10TH and 11TH Amendments.

Unfortunately, this Court avoided answering the "subject matter jurisdiction" question which was squarely raised in the (original) Petition for Leave of Court to File a Petition for Writ of Mandamus after Solicitor General Robert Bork informed the Court that the "Jurisdictional Statement" on the mandatory appeal had been filed in the interim and that the "jurisdiction" question "could" (not "would") be addressed in that case when this Court heard that appeal pursuant to its mandatory appellate jurisdiction of the three Judge Court Judgment.

In 1973, the National need for a decision upholding the subject matter jurisdiction of a state court on important state matters such as the abatement of moral public nuisances pursuant to Chapter 3767 of the Ohio Revised Codes and the **10TH and 11TH Amendments** was abundantly clear. The "moral depravity" which then was being exhibited by the escalating pornography industry and porn industry films, such as the film "Deep Throat", (which "glorified" sodomy per o.s. [oral sodomy]) were appearing as the regular fare at the Cinema I Theater in Lima, Ohio and on motion picture screens in each of the 50 States. The federal courts were wrongfully being employed by the porno industry to interfere with the **10TH and 11TH Amendment efforts** of law enforcement to produce real evidence of such hard-core films in the state courtrooms using the search warrant process and the subpoena duces tecum process. See, for example, ***Hicks v. Miranda***, 422 U.S. 322 (1975) as an example of the intrusive litigation faced by law enforcement.

In May of 1973, the depravity that files like "Deep Throat" represented in its graphic depictions of "oral sodomy" (o.s.) was uniformly recognized as being contrary to the "Natural Law" and Judaeo Christian moral standards, and acknowledged as such by an overwhelming majority of the legal profession. 23 years earlier (1950), Professor Rollin M. Perkins, now Connell Professor of Law Emeritus, U.C.L.A. Professor Emeritus, University of Hastings College of Law had instructed Amicus Curiae herein (as a first year law student in Prof. Perkins' criminal law class at U.C.L.A.), and later published in his definitive text on the Criminal Law, that the Common Law in the United States with respect to this subject (oral sodomy) and "public morals" was clearly defined and well documented. [3]

---

[3] See text of ***Perkins*** on Criminal Law (at pages 465-466), *the Foundation Law Press*, 3RD Ed., (first published in 1955), which reads in part:

" The ancient city of Sodom, reputedly destroyed because

BEST AVAILA

III (C) The Prosecuting Attorney's Interests Versus This Court's Interests in *Huffman*.

In both cases, Huffman asked that the U.S. District Court Order be vacated and that the case be remanded to the Ohio Judicial System (so that a final appellate decision could be achieved).

The "Questions Presented" at pages 5-9 and the "Statement of Facts" at pages 9-28 of the Petition in No. 72-1613 Misc. was purposely comprehensive[4/] and tailored to the Prosecutor's special needs so that anyone in the appellate chain who later undertook a study of those documents would immediately recognize the jurisdictional issue being raised and the need for an issuance of a **Rule *Nisi*** re jurisdiction.

This Court was thinking of the Federal Judiciary's own National needs, and was not (primarily) interested in the practical aspects of the Public Nuisance Abatement case in relation to the State of Ohio.

At Oral Argument, Justice Stewart asked if Ohio would be satisfied if the ***Younger*** **Rule** in criminal cases were extended to civil proceedings. Prosecutor Huffman answered "No", in that, under this Court's own precedents, it must first address the question of "subject matter jurisdiction"– i.e., whether the case

---

> of its unspeakable vices, is the source from which the word 'sodomy' is derived. The offense was regarded with such abhorrence in the early days that Blackstone literally refused to name it, referring to it only as 'the infamous *crime against nature*.'[25] 4 Bl.Comm. *215. " (Our Emphasis.)

[4/] See, in particular, at "Appendix C", pages C-7 through C-10, the pleading by reference of the time/motion studies of the films named, at paragraph 7(j) and 10(c) of the Complaint to abate the Cinema I Theater as a public nuisance.

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was properly before the Court– realizing that the State of Ohio had a very real need for its presence in the State of Ohio and an Ohio Appellate Ruling by the Ohio Supreme Court, and the U.S. District Court had interfered with the **11TH Amendment** subject matter jurisdiction of the State of Ohio Judicial System, as to an important State Interest.

Amicus Curiae Clancy recalls that, during oral argument, with knowledge of what was happening in "society" (in the "real world", the State Courts were being ham-strung by "technical" procedural decisions in their attempts to introduce the "prints" of hard-core pornographic films like "Deep Throat" in evidence before the State Courts on the merits) he stated, as his opinion, that the federal courts' ruling in the ***Huffman*** case was underwriting "cocksucking and whore mongering"– language never before used by Amicus Curiae in his professional career, or in conversation. Amicus Curiae had determined that he would make the statement if such a statement became necessary. It was necessary, but proved to be ineffective. A majority of the Court was determined to extend the ***Younger*** **Rule** to civil cases, and would say or do no more.

Unfortunately, the fractured nature of the Court in 1975 prevented the Justices from coming together on the **11TH Amendment** issue. Instead of remanding the case to the Ohio Judicial System for further proceedings, the majority of Justices complied with their duty by addressing the jurisdictional issue obliquely in a technical sense and formulated the **"*Huffman* Abstention Doctrine"** (as a proper response pursuant to the rudimentary rule of law that this Court had jurisdiction to determine jurisdiction). Proof of the correctness of this "jurisdictional" analysis can be found in the last paragraph of the Court's Opinion in ***Huffman v. Pursue, Ltd.***, supra, reading:

> " We therefore think that this case is appropriate for remand so that the District Court may consider

> whether irreparable injury can be shown in light of 'Without a Stitch,' and if so, whether that injury is of such a nature that the District Court may assume jurisdiction under an exception to the policy against federal judicial interference with state court proceedings of this kind. The judgment of the District Court is vacated and the cause is remanded for further proceedings consistent with this opinion." (My emphasis.)

The opinion failed to record the fact that the real issue before the High Court was "which of the two courts had subject matter jurisdiction" and that an **11TH Amendment** violation was at risk.

III (D) The Battle was Won, but the "War" was Lost. This Court Can, and must Correct That Defect.

That Huffman had prevailed on his appeal was no great victory. The "battle" was won, but the entire war against such obscene hard-core pornography was lost. Huffman acknowledged that reality by filing a Petition for Rehearing, which was summarily denied. The case was not remanded back to the Ohio Appellate Courts for their consideration, as requested by the State of Ohio in its Appeal, and the "closure" issue which was then before this Court was never resolved. ***Pursue, Ltd.***, the Plaintiff in the Federal District Court, refused to litigate further and disappeared. [5/]

Amicus Curiae respectfully submits that, in view of the above history, the ***Huffman*** **Abstention Doctrine** as it is presently being administered is wrong-headed. It was formulated as a jurisdictional rule to separate **Article 3, §2**

[5/] **See Appendix C to this Amicus Curiae Brief, being a contemporary historical account recently prepared by Amicus Curiae, writing of the disaster which resulted from the inability to obtain a resolution of the "closure" issue.**

jurisdiction from **11TH Amendment** jurisdiction, and should have been applied, as such, by the U.S. District Court. However, during the past 27 years this Court has never come together and admitted that background fact in any of the many opinions on the ***Younger*** - ***Huffman*** **Abstention** cases.

This Court can and should correct that defect in this case upon the facts set forth in this Amicus Curiae Brief by ordering U.S. District Judge Myron H. Thompson to vacate his judgment in the trial court for lack of subject matter jurisdiction under the **11TH Amendment**, the ***Huffman*** **Abstention Doctrine** and its progeny: ***Middlesex Ethics Comm. v. Garden State Bar Assn.***, 457 U.S. 423 (1982), ***Migra v. Warren City School Dist. Bd. of Ed.***, 465 U.S. 75 (1984). ***University of Tennessee v. Elliott***, 478 U.S. 788 at 799 (1986), and ***Plough***, supra; and under the ***Rooker-Feldman*** **Abstention Doctrine**, the **Res Judicata Doctrine** and the **Stare Decisis Doctrine** of this Court.

ARGUMENT

In his opinion, U.S. District Judge Myron H. Thompson erroneously assumed that the ***Younger*** **Abstention Doctrine** was not applicable because a case involving the Statute was not pending in the State Court. See ***Summit Medical Associates***, 984 F.Supp. 1404 at 1432-1433. Amicus contends that Judge Thompson's assumption is fatal to his judgment for the Plaintiffs. See ***Pennzoil Co. v. Texaco, Inc.***, 481 U.S. 1 at 14-17 (1987) at fn. 9 on page 16:

> "9. In some cases, the probability that any federal adjudication would be effectively advisory is so great that this concern alone is sufficiently to justify abstention, even if there are no pending state proceedings in which the question could be raised. See ***Railroad Comm'n of Texas v. Pullman Co.***, 312 U.S. 496, 85 L.Ed.2d 971, 61 S.Ct. 643 (1941)." (My emphasis.)

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This is "such a case". The cause herein involves an "as applied" constitutional claim. The Trial Court's "referral of questions" to the Alabama Supreme Court and that Court's refusal to reply makes the Federal Court's Opinion "advisory" and satisfies the requirement of ***Pennzoil Co. v. Texaco, Inc.***, supra.

Plaintiffs cannot reinterpret ***Ex Parte Young***, supra, or use it to overrule ***Younger***, supra, because ***Ex Parte Young*** was "factored" into Justice Hugo Black's majority opinion in ***Younger***. The Federal District Court is bound by ***Younger*** and ***Huffman***, supra, and is required to make the special jurisdictional findings which ***Younger*** requires. See ***Huffman***, 420 U.S. at 611-613. That jurisdictional burden was on the Federal Plaintiff who had to plead and prove his right to be in the Federal Court.

The ***Younger*** **Abstention Doctrine** is controlling even where there is no state case pending at the time of filing the federal action where, as here, the State Court has not had an opportunity to interpret the State Statute, and such an interpretation can "save" the Statute– the so-called ***Watson v. Buck***, supra, exception which is referred to in Justice Black's opinion in ***Younger v. Harris***, 401 U.S. 37 at 45-46 and 49.

In his analysis, Judge Thompson did not consider the ***Younger - Huffman*** **Abstention Doctrines** as an integral part of the **11TH Amendment challenge**. See ***Summit Medical Associates***, supra, 984 F.Supp at 1419:

> "IV. ATTORNEY GENERAL DEFENDANTS' JURISDICTIONAL CHALLENGES
>
> " . . . .
>
> " For the sake of clarity, and to ensure that it fully and properly resolves each of the attorney general defendants' challenges, the court will address them

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> separately and systematically. First, it will determine whether, as the attorney general defendants contend, all of the plaintiffs' claims are barred by the eleventh amendment, so that the entire lawsuit must be dismissed. Next, the court will ascertain whether the suit as a whole, or any subset of the plaintiffs' claims, must be dismissed for lack of an Article III case or controversy. To resolve this issue, the court will address whether the plaintiffs enjoy standing to bring their various claims, as well as whether any of these claims has been rendered moot, and hence non-justiciable, in light of the defendants' post-filing actions. Finally, the court will determine whether any of the abstention doctrines, grounded on considerations of comity between the state and federal judicial systems, and on principles that govern federal [**19] courts sitting in equity, counsels dismissal of any of the plaintiffs' claims, or a stay pending resolution by the Alabama Supreme Court of any issues raised by these claims. . . . ." (My emphasis.)

The U.S. District Judge's analysis of the Alabama Attorney General's Jurisdictional challenges which appears thereafter at pages 1420-1439 reads:

> "A. **11TH Amendment**, 984 F.Supp. 1404 at 1420-1425.
>
> "B. **Article III Case** or Controversy requirements, 1425-1432.
>
> 1. Standing, 1425-1430.
> 2. Mootness, 1430-1432.
>
> "C. **Abstention Doctrines**, 1432-1439.
>
> 1. ***Younger*** **Abstention**, 1432-1434.
> 2. **Equity Principles**, 1434-1436.
> 3. **Pullman Abstention**, 1436-1439."

As can be seen from the above outline, the ***Younger*** **Abstention**

Doctrine, which should be analyzed at "Point A" on page 1420 (at the very beginning) because it and the ***Huffman*** **Abstention Doctrine** are squarely on point and controlling, appears, as an afterthought, as one of the General Abstention Doctrines to be considered as a mere matter of Equity.

CONTENTIONS OF AMICUS CURIAE JAMES J. CLANCY.

Younger v. Harris, supra (1971), was a 5-4 decision. The majority opinion, which was written by Justice Hugo Black, clearly rejected the type of interference which was employed by the Federal Court in this case. Although Justice Black was an absolutist on the **1ST Amendment**, he was a stronger supporter of "State's Rights" under the **11TH Amendment**, which is reflected in his ***Younger*** opinion, which involved a prosecution involving free speech. His "***Younger***" opinion (the ***Younger*** **Abstention Doctrine**) reconciled the principles expressed in 5 cases: ***Ex Parte Young***, 209 U.S. 123 (1908): ***Younger*** at 45; ***Dombrowski v. Pfister***, 380 U.S. 479 (1965): ***Younger*** at 48; ***Watson v. Buck***, 313 U.S. 387 (1941): ***Younger*** at 46, 49, 53; ***Fenner v. Boykin***, 271 U.S. 240 (1926): ***Younger*** at 45-46; ***Atlantic Coast Line R. Co. v. Engineers***, 398 U.S. 281 (1970): ***Younger*** at 40. The ***Younger*** **Abstention Doctrine** is firmly grounded upon the Sovereign right of each state under the **10TH and 11TH Amendment** to have its important state interests (both criminal and civil) tried and decided by the State Judiciary, which has the absolute right to "interpret" the statute and "assist" the State Legislature in its effort to write constitutional legislation, where possible, see ***Watson v. Buck***, supra.

Summit's race to the courtroom is fatal to its cause. By filing its Complaint in July, two weeks before the Statutes became effective (on August 1ST and 12TH, 1997), it is unable to establish that the U.S. District Court had federal subject matter jurisdiction because the statutes did not exist in July and were not effective. See, also, ***Hicks v. Miranda***, 422 U.S. 332

(1975) which would have been available to the Alabama Attorney General had he elected to use it (i.e., by filing a declaratory judgment action in the State Court alleging all of the issues raised by Summit and moving to dismiss the Federal action on the grounds that he was not acting as a "rogue" and, under the **11TH Amendment**, the first interpretive decision of the Statute must be by the Alabama Supreme Court after the first trial under the Statute except where the ***Younger*** special findings of fact exist).

CONCLUSION

In sum, the State of Alabama has the right of a sovereign state, under the **11TH Amendment**: **(1)** to enact a statute which criminalizes "Infanticide" and to outlaw the inhuman practice of partial birth abortion in the State of Alabama; **(2)** to have that "Infanticide" criminal statute and the partial birth abortion proscription interpreted by the Alabama Supreme Court and given a constitutional interpretation, if possible, under ***Watson v. Buck***, supra; **(3)** to rely upon the **Doctrine of Separation of Powers** which mandates that a state statute must be "saved", if possible, by the State Supreme Court, rather than struck by the federal courts (which cannot "interpret" a state statute); and **(4)** to answer any constitutional challenge in the State Court without being liable for attorney fees (compare **42 U.S.C. §1988**); where the ***Dombrowski***, supra, exception is not available because the statute is not unconstitutional in every sentence, clause, etc., nor is the Alabama Attorney General's conduct in the nature of that which is required for ***Dombrowski*** to be operational in the face of a ***Younger*** **Abstention Doctrine** challenge.

Dated: **February 2, 2000**

Respectfully submitted,

James J. Clancy, Amicus Curiae and Counsel of Record.

APPENDIX A

CORRESPONDENCE BETWEEN AMICUS CURIAE AND COUNSEL OF RECORD FOR PETITIONERS AND RESPONDENTS.

(Reference: ***Motion for Leave to File an Amicus Curiae Brief, etc.,*** **. Page 1, line 3, Page 4, line 10.)**

The Law Office Of James J. Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, California 91352

(818) 352-2069
FAX (818) 352-6549

January 28, 2000

Jay Alan Sekulow
Alabama Deputy Attorney General
1000 Thomas Jefferson St., N.W., Suite 609
Washington, D.C. 20007

Transmitted by Fax (letter only)
(202) 337-3167 and by
Federal Express

Re: ***Amicus Curiae*** Consent Request: ***Bill Pryor, in his official capacity as Attorney General for the State of Alabama, etc., et al. v. Summit Medical Associates, P.C.; et al.*** Petition for Writ of Certiorari in the U.S. Supreme Court, No. 99-1041.

Dear Mr. Sekulow;

Pursuant to **Rule 37(2)(a)** of the **U.S. Supreme Court Rules**, request is hereby made for your consent to the filing of a brief ***Amicus Curiae*** by my client, ***Clarence Murphy***, in support of neither party in the above cause.

Clarence Murphy contends that the ***Huffman*** - ***Younger*** **Abstention Doctrine** is controlling and that a Writ of Certiorari must be granted on the grounds that the Federal Court lacks subject matter jurisdiction under the **11TH Amendment** and the ***Huffman*** - ***Younger*** **Abstention Doctrine**.

The Question which has been proposed is as follows:

I

Whether the ***Huffman*** - ***Younger*** **Abstention Doctrine**, involving important state interests, expressed by this Court in ***Huffman v. Pursue Ltd.***, 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975), reh. den., 421 U.S. 971, 44 L.Ed.2d 463, 95 S.Ct. 1969 and ***Younger v. Harris***, 401 U.S. 37, 27 L.Ed.2d 669, 91 S.Ct. 746 (1971), and their progeny: ***Middlesex Ethics Comm. v. Garden State Bar Assn.***, 457 U.S. 423, 73 L.Ed.2d 116, 102 S.Ct. 2515 (1982), ***Migra v. Warren City School Dist. Bd. of Ed.***, 465 U.S. 75, 79 L.Ed.2d 56, 104 S.Ct. 892 (1984) and ***University of Tennessee v. Elliott***, 478 U.S. 788, 92 L.Ed.2d 635, 106 S.Ct. 3220 (1986); and by the 8TH Circuit progeny: ***Plough v. West Des Moines Community School District***, 70 F.3d 512 (CA 8TH 1995); is based upon both **10TH** and **11TH Amendment** principles and is, therefore, "jurisdictional"; that is, whether its function is to resolve a conflict involving what appears to be "concurrent federal jurisdiction" by determining from the facts pleaded and before the trial, whether the federal court should have federal jurisdiction under **Article 3, §2** (and ***Ex Parte Young***, 209 U.S. 123, 52 L.Ed. 714, 28 S.Ct. 441 [1908]), or the state court should have exclusive jurisdiction under the **11TH Amendment** (i.e., the federal action must be dismissed) **?**

The arguments which ***Amicus Curiae Clarence Murphy*** will make in support of the above question are those set forth in the **Application for Leave of Court to File a Petition to**

Intervene Pursuant to F.R.C.P. 24(a)(2), and Petition for Writ of Mandamus, Pursuant to 28 U.S.C. §1651(a) in Excess of Applicable Page Limit (113 pages) in ***In Re Murphy***, U.S.S.C.T. Misc. No. A-612, transmitted to the U.S. Supreme Court on January 23, 1999 and filed with the U.S. Supreme Court on March 10, 1999 as ***In Re Clarence Murphy***, No. 98-1442 (30 pages).

A copy of the **Petition** in ***In Re Clarence Murphy***, No. 98-1442 (30 pages) and the oversized **Petition** submitted to the Court by Motion (and denied) is concurrently being transmitted to you by Federal Express on this date (Friday, January 28TH).

Sincerely yours;
James J. Clancy
Attorney for Clarence Murphy.

JJC/cjc

Encls.: ***In Re Clarence Murphy, Application, etc., and Petition to Intervene, etc.***, U.S.S.C.T. No. A-612 (sent by Federal Express).

In Re Clarence Murphy, Petition to Intervene, etc., U.S.S.C.T. No. 98-1442 (sent by Federal Express).

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January 28, 2000

Simon Heller, Esq. **Transmitted by Fax (letter only)**
Center for Reproductive Laws and Policy **(212) 514-5538**
120 Wall Street, 18TH Floor **and by Federal Express**
New York, New York 10005

Re: ***Amicus Curiae*** Consent Request: ***Bill Pryor, in his official capacity as Attorney General for the State of Alabama, etc., et al. v. Summit Medical Associates, P.C.; et al.*** Petition for Writ of Certiorari in the U.S. Supreme Court, No. 99-1041.

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James J. Clancy
Attorney for Clarence Murphy.

JJC/cjc

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January 31, 2000

Jay Alan Sekulow
Alabama Deputy Attorney General
1000 Thomas Jefferson St., N.W., Suite 609
Washington, D.C. 20007

Transmitted by Fax
(202) 337-3167

Re: Amendment to ***Amicus Curiae*** Consent Request fax letter, dated January 28, 2000, re: ***Bill Pryor, in his official capacity as Attorney General for the State of Alabama, etc., et al. v. Summit Medical Associates, P.C.; et al.*** Petition for Writ of Certiorari in the U.S. Supreme Court, No. 99-1041.

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Sincerely yours;
James J. Clancy

JJC/cjc

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January 31, 2000

Simon Heller, Esq. **Transmitted by Fax**
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120 Wall Street, 18TH Floor
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Sincerely yours;
James J. Clancy

JJC/cjc

APPENDIX B

CLARENCE F. MURPHY V. PLANNED PARENTHOOD OF GREATER IOWA, INC., ET AL.,
SCOTT COUNTY DISTRICT COURT NO. 94716:

FIRST AMENDED PETITION FOR A DECLARATORY JUDGMENT AND AN INJUNCTION TO PREVENT PLANNED PARENTHOOD'S USE OF LAND FOR THE OBNOXIOUS AND OFFENSIVE TRADE OF ABORTION AND INFANTICIDE IN VIOLATION OF: (1) PETITIONER MURPHY'S SUCCESSFUL STATUTORY PROTEST PURSUANT TO BETTENDORF ZONING CODE §24.2 AND §24.4; AND (2) PARAGRAPH 3 OF THE RECIPROCAL RESTRICTIVE AND PROTECTIVE COVENANTS THAT RUN WITH BOTH PETITIONER MURPHY'S LOT 3 OF BLOCK 4 AND THE ADJOINING LAND OF PLANNED PARENTHOOD TO THE SOUTH, WHICH LIES BETWEEN BLOCK 4 AND BLOCK 1 AND WITHIN THE QUAD CITY TECHNOLOGICAL CENTER, A PLANNED UNIT DEVELOPMENT (P.U.D. ZONE).

(Reference: *Brief Amicus Curiae of James J. Clancy, etc.*, ... Page 4, line 27.)

IN THE IOWA DISTRICT COURT
FOR SCOTT COUNTY

	)	**Case No. 94716**
Clarence F. Murphy,	)	
Plaintiff,	)	**First Amended Petition for a**
	)	**Declaratory Judgment and**
vs.	)	**an Injunction to Prevent**
	)	**Planned Parenthood's Use of**
Planned Parenthood of	)	**Land for the Obnoxious and**
Greater Iowa, Inc.	)	**Offensive Trade of Abortion**
Defendant,	)	**and Infanticide in Violation**
	)	**Of: (1) Petitioner Murphy's**
and	)	**Successful Statutory Protest**
	)	**Pursuant to Bettendorf**
The City of Bettendorf,	)	**Zoning Code §24.2 and**
Iowa	)	**§24.4; and (2) Paragraph 3**
Defendant,	)	**of the Reciprocal Restrictive**
	)	**and Protective Covenants**
and	)	**That Run with Both**
	)	**Petitioner Murphy's Lot 3 of**
Middle Road Investors, Inc)		**Block 4 and the Adjoining**
Defendant.	)	**Land of Planned Parenthood**
	)	**to the South, Which Lies**
		Between Block 4 and Block 1
		and Within the Quad City
		Technological Center, a
		Planned Unit Development
		(P.U.D. Zone).

COMES NOW Plaintiff, Clarence F. Murphy, and for his Petition for a Declaratory Judgment and Injunction, states as follows:

PARTIES

1. Petitioner Clarence F. Murphy and his wife Hwa Cha Murphy (hereinafter called "Petitioner Murphy" and "Murphy") are citizens of Bettendorf, Iowa, who reside at 2835 Willow Drive, Bettendorf, Iowa. Murphy and his wife are the owners of two twelve plex apartments known as 2655 Tech Drive, Bettendorf (a.k.a. Lot 3. of Block 4) and 2750 Tech Drive, Bettendorf (a.k.a Lot 2 of Block 2) of the Quad City Technological Center, a planned unit development and hold title to such properties in the name of Murpak Enterprises, Inc., a Delaware Corporation which is wholly owned by Murphy and his wife Hwa Cha.. See **Exhibit** pages **C-3** and **C-4**, infra.

2. Lot 3 of Block 4 was conveyed by Middle Road Investors, Inc. (hereinafter called "Defendant Middle Road" and "Middle Road") to Petitioner Murphy by Warranty Deed dated January 30, 1976, which was filed with the Office of Scott County Recorder on February 18, 1976 as Document 2524-76 (after the Iowa Supreme Court decision in ***Kuntz*** [infra, 1975] and ***Harris***, [infra, 1975]). Defendant Middle Road had acquired its ownership by Warranty Deed from the City of Bettendorf (hereinafter called "Defendant Bettendorf" and "Bettendorf") on the same date (February 18, 1976) in partial performance of a contract dated November 7, 1972 and recorded in the Office of Scott County Recorder as Document 1947-73. The abstract for the Plat of Lot 3 of Block 4, which is attached as **Exhibit A** and incorporated by reference herein, contains the following certification at page **A-3**, last paragraph:

> " NOW THEREFORE, Middle Road Investors, Inc., and the City of Bettendorf, Iowa, hereby declare that the real property described in the Surveyor's Certificate is and shall be held, transferred, sold, conveyed and occupied subject to the Restrictive and Protective Covenants heretofore filed on April 11, 1973,

as Document #5134-73 with the platting of Block 1 of Quad City Technological Center shall remain in effect and apply to Lot 3 of Block 4 as platted herein.

" Dated this 20th day of January, 1976.

MIDDLE ROAD INVESTORS, INC.
By Robert D. Danico, President
By C.J. Munson, Secretary

CITY OF BETTENDORF, IOWA
By William C. Glynn, Mayor
By Margaret W. Lake, Deputy City Clerk"

3. Lot 2 of Block 2 was conveyed to Petitioner Murphy and his wife by Ed Speer Construction, Inc. by Warranty Deed dated February 25, 1994 and filed on March 4, 1994 in the Office of Scott County Recorder as Document No. 7001-94 in full performance on that real estate contract dated June 1, 1979 and recorded on January 23, 1980 in the Office of the Scott County Recorder as Document No. 1155-80. The abstract for the Plot of Lot 2 of Block 2 which is attached as **Exhibit B** and incorporated by reference herein shows that the Defendant Bettendorf was an owner with Middle Road of Block 2 and contains the following certification at page **B-3**, last paragraph:

" NOW THEREFORE, Middle Road Investors, Inc., and the City of Bettendorf, Iowa, hereby declare that the real property described in the Surveyor's Certificate is and shall be held, transferred, sold, conveyed and occupied subject to the Restrictive and Protective Covenants heretofore filed on April 11, 1973, as Document #5134-73 with the platting of Block 1 of Quad City Technological Center shall remain in effect and apply to Lot 2 as platted herein. In addition thereto, each lot owner of Lots in said Block 2 shall share the

common driveways into said Block 2 from Tech Drive and P.U.D. Drive.

" Dated this 1st day of July, 1975.

MIDDLE ROAD INVESTORS, INC.
By Robert D. Danico, President
(Corporate Seal) By C.J. Munson, Secretary

CITY OF BETTENDORF, IOWA
By William C. Glynn, Mayor
(Seal of City of Bettendorf, Iowa)
By James W. Strieck, Clerk"

4. Defendant Planned Parenthood of Greater Iowa, Inc. (hereinafter called "Defendant Planned Parenthood" and "Planned Parenthood") is the present owner of a parcel of land within the metes and bounds of the Planned Unit Development (hereinafter "P.U.D. Zone") known as Quad City Technological Center to the City of Bettendorf, lying between Block 1 and Block 4, the Lot having been purchased by Defendant Planned Parenthood on April 14, 1997. The northern boundary of the Planned Parenthood property abuts and forms the southern boundary of Lot 1, Lot 2 and Lot 3 of Block 4. The southern boundary of the Planned Parenthood property abuts and forms the northern boundary of Block 1, and the northern boundary of the right of way know as Happy Joe Drive, as shown on the two maps which are attached to this Petition as **Exhibit C** and pleaded by incorporation herein. At the time of the platting of Lot 3 of Block 4, it was the expressed intention of Defendant Bettendorf and Defendant Middle Road, as the developers of the Quad City Technological Center to the City of Bettendorf, to place the same "restrictive" and "protective" covenants that were attached to Block 1 on the future development and platting of the P.U.D. Zoned Planned Parenthood property, which was owned in fee simple by Defendant Bettendorf and Defendant Middle Road, so that the "benefits" and "restrictions" on all of

the said Lots in said land development were "reciprocal", as expressed and accomplished in the recording of the platting of Blocks 1 through 6 as a whole, see **Exhibit D** to this Petition (infra, at page **D-3**, the first paragraph and page **D-6**, paragraph 11) and pleaded by incorporation herein. Petitioner avers that the terms of the restrictive and protective covenants were extended by the developer, Defendant Middle Road, for a finite period of 10 years to the year 2003 to provide time to complete the platting of the plan as a whole, so that upon the completion of that land development, each of the lots within the P.U.D. Zone would have and enjoy the same benefits and burdens.

5. By the platting of Lot 3 of Block 4, Petitioner Murphy's property was burdened by the restrictive covenants but did not, at that time, receive the promised reciprocal benefits (the "protective" covenants) from the adjoining Planned Parenthood property the title to which, was thereafter "clouded" by the "equitable protective servitude" which attached to Murphy's land to the north. The "restrictive" and "protective" covenants in the platting of Lot 3, Block 4 are writings which establish a bilateral contract between Defendant Bettendorf and Defendant Middle Road as the developers and Murphy who, by virtue of his purchase of Lot 3, Block 4, joined in the unilateral agreement of Defendant Bettendorf and Defendant Middle Road, who owned the said "P.U.D. Zoned" Planned Parenthood land in fee simple in 1975.

6. The City of Bettendorf is named as a Defendant because of its participation with Middle Road in the draftsmanship and approval of Paragraphs 3 and 11 of the Restrictive (burden) and Protective (benefit) Covenants as noted above and in that part of the Abstract for the Final Plat of Block 1 (see **Exhibit A-2 and A-3** and **Exhibit D** to this Petition at pages **D-1 through D-11**) which reads in part as follows with respect to Paragraphs 3 and 11:

"RESTRICTIVE AND PROTECTIVE COVENANTS

" MIDDLE ROAD INVESTORS, INC., an Iowa Corporation, hereby establish and declare the following restrictive and protective covenants to be applicable to the following described real estate located in Scott County, Iowa, to-wit: All lots in Blocks 1 through 6 of The Planned Unit Development known as Quad City Technological Research Center, to the City of Bettendorf, Iowa, which plat is recorded as Document No. 5134-73 in the office of the Recorder of Scott County, Iowa:

" 1. No building . . . .

"

. . . .

" 3. No obnoxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the other lot owners in said addition.

"

. . . .

" 11. These restrictions shall be in force from the date of the Owner's Certificate to which it is an exhibit until January 1, 1993 or until such later date to which the same may be extended as hereinafter provided, and shall run with and be binding upon all lots in said addition, and every part thereof and shall be appurtenant to and for the benefit of all said lot owners. These restrictions shall be automatically extended for an additional ten-year period on January 1, 1993, and each ten year anniversary of said date unless a written instrument signed and acknowledged by the owners of a majority of all the lots in Quad City Technological Center shall prior to such date or anniversary be

recorded with the Recorder of Scott County, Iowa, abrogating or modifying the same in whole or in part to the extent therein set forth. In determining the majority of said lot owners, each lot shall be entitled to one vote to be cast according to the will of a majority in interest of any co-owners having interest therein whether such majority is represented by a majority of the undivided interests in an entire lot or ownership of the greater portion of a subdivided lot. A contract purchaser or life tenant of the legal title shall be deemed the owner. In all other respects, ownership shall refer to record owner ship of legal title." (Our emphasis.)

" 11. Invalidity, abandonment or waiver of any one or more of the same restrictions shall in no wise affect any of the other restrictions, which shall remain in full force and effect.

" 12. In the event any person who may at any time own or occupy any of the numbered lots, or part thereof, in said Addition should violate or threaten to violate any of these restrictions, said Middle Road Investors, Inc. its successors and assigns, and the owners from time to time of any of the numbered lots in said Quad City Technological Center shall have the right to proceed in any court of law or equity, by injunction or otherwise, to enforce performance and restrain violation, or pursue any other remedy to which it or they may be entitled and shall have the right to collect from the party or parties violating or threatening to violate the same, either jointly or severally, all damages, costs, expenses and counsel fees resulting from the violation thereof, or incurred in, or in connection with, said proceedings.

"Dated at Bettendorf, Iowa, this 3rd day of April, 1973.

Middle Road Investors, Inc.
By: Robert D. Danico, President
(Corporate Seal) By: C.J. Munson, Secretary"

7. Thereafter, Middle Road did not plat Block 5 and 6 as planned. Instead, on June 16, 1976 (5 month after the conveyance of Lot 3, Block 4 to Murphy), Defendant Middle Road, without Notice to Murphy, conveyed the Planned Parenthood property by a Warranty Deed to "Robert Versman and Rose Versman, husband and wife, as tenants in common, and to their heirs and assigns." The legal document conveying the real estate, contains an asterisk and the typed instruction reading "subject to restrictive covenants recorded as document 5134-73 S.C. Iowa Rec. Off." which is initialed by Robert D. Danico as President and C.J. Munson, as Secretary of Middle Road, Inc. (see Document 10830-76 at **Exhibit E** to this Petition).

8. 10 years later, on December 23, 1986, Robert H Versman and Rose Versman conveyed an undivided 1/12 interest in the Planned Parenthood property to each of the following six persons (a total of 50%):

Kenneth J. Versman
Linda Jean Versman
Stuart J. Heller
Judith Lee Heller
Frederick J. Glassman
Frances Belle Glassman

(See Document 25349-86, recorded on December 31, 1986, at **Exhibit F** to this Petition which contains the typed instruction reading: "Subject to: 1. Easements, covenants and restrictions of record.")

9. On December 24, 1986, Robert H. Versman and Rose Versman conveyed an undivided 1/12 interest in the

Planned Parenthood property to each of the following six persons (a total of 50%):

Kenneth J. Versman
Linda Jean Versman
Stuart J. Heller
Judith Lee Heller
Frederick J. Glassman
Frances Belle Glassman

(See Document 1735-87, recorded on January 28, 1987 at **Exhibit G** to this Petition which contains the typed instruction reading: "Subject To: Easements, covenants and restrictions of record" and "This Warranty Deed confirms the deed executed by the Grantors on December 23, 1986, . . . recorded in the Scott County Recorder's office as Document No. 25349-86 and ratifies and approves the conveyance of a total of one-half of the real property legally described in Exhibit A hereto").

10. On January 3, 1987, Robert H. Versman and Rose Versman conveyed an undivided 1/12 interest in the Planned Parenthood property to each of the following six persons (a total of 50%):

Kenneth J. Versman
Linda Jean Versman
Stuart J. Heller
Judith Lee Heller
Frederick J. Glassman
Frances Belle Glassman

(See Document 1736-87 recorded on January 28, 1987 at **Exhibit H** to this Petition which contains the typed instruction reading: "Subject to: Easements, covenants and restrictions of record" and "This Warranty Deed confirms the deed executed by the Grantors on Jan. 2, 1987 recorded in the Scott County Recorders office as Document 165-87 and ratifies and approves

the conveyance of a total of one-half of the real property legally described in Exhibit A hereto.")

11. On April 14, 1997, Kenneth J. Versman and Linda Jean Versman, Husband and Wife, Stuart J. Heller and Judith Lee Heller, Husband and Wife, and Frederick J. Glassman and Frances Belle Glassman, Husband and Wife, conveyed by Warranty Deed the Planned Parenthood property to Planned Parenthood of Greater Iowa, Inc. or Planned Parenthood of Greater Iowa Foundation, Inc. (See Document 09482-97, dated April 14, 1997 and recorded April 24, 1997 at **Exhibit I** to this Petition (last in order).

PETITIONER MURPHY'S CONTENTIONS

12. An actual controversy has arisen between Petitioner Murphy and Defendants, relating to the legal rights and duties of Defendant Planned Parenthood and Defendant Bettendorf, in respect to said Lots as those rights and duties are affected by Paragraph 3 and Paragraph 11 of the above stated Restrictive (burden) and Protective (benefit) Covenants. Petitioner Murphy contends that Paragraph 11 must be construed against its co-author Defendant Bettendorf and read to extend the Restrictive and Protective Covenants automatically for an additional, finite ten-year period on January 1, 1993 to January 1, 2003 without reference to that language which appears after the "comma" which follows the date "January 1, 1993". It would appear that such "finite" language was adopted to keep the first additional 10-year period extension in compliance with the requirements of **Bettendorf Code §614.24** which was enacted in 1966 and was interpreted by the Iowa Supreme Court in ***Compiano v. Kuntz***, 226 N.W.2d 245 (Iowa 1975) and ***Presbytery of Southeast Iowa v. Harris***, 226 N.W.2d 232, 237-38, 242 (Iowa 1975). Because the "finite" 10-year extension period was accomplished during the first 21-year period and was a recorded document, it met the

requirements of **Bettendorf Code §614.24**, which then read "unless the claimant shall, by himself, or by his attorney or agent . . . . Shall file a verified claim with the recorder of the county wherein such real estate is located within said twenty-one year period".

13. Defendant Bettendorf is a **Home Rule** City in the State of Iowa which is empowered to enact zoning ordinances (i.e., P.U.D. and C-5 Zones) and amendments (zone changes) on real property in the City of Bettendorf, acting by and through the Bettendorf City Council, and to act as "parens patria" on behalf of Petitioner Murphy and other Bettendorf residents (citizens) in defense of their property rights under such zoning ordinances when such zoning rights of the City of Bettendorf are challenged by third parties in a Federal District Court in a Federal Civil Rights action pursuant to **42 U.S.C. §1983**.

14. Such zoning ordinances and zone changes are accomplished by a legislative act by the City Council to accomplish the same. Under the **Doctrine of Separation of Powers**, the general rule is that the Courts cannot write or rewrite the zoning laws, nor force the legislative body to enact or amend a zoning ordinance. An amendment which is adopted in disregard of the protest of property owners who are acting pursuant to a valid "protest" ordinance, is void. The City of Bettendorf is a necessary party in that a Federal Judgment of U.S. District Court Judge Charles R. Wolle in a Federal Civil Rights action brought by Defendant Planned Parenthood, purports to rezone the Planned Parenthood property (P.U.D. Zone to C-5 Zone). Under the **Doctrine of Separation of Powers**, the general rule is that a federal court has no power (lack of subject matter jurisdiction) to rezone real property in the City of Bettendorf, which function (zoning), under the U.S. Supreme Court decision in ***Huffman v. Pursue, Ltd.***, infra., must be held to be both a "municipal affair" and an "important state matter" which is protected by the **11th Amendment**.

15. Defendant Planned Parenthood wishes to construct a clinic in Bettendorf, Iowa which will cater to the "abortion" trade. The **Bettendorf Zoning Ordinance** allows abortion clinics on property in a C-5 zone. Had Planned Parenthood purchased a C-5 Zoned property, it would not have had a zoning problem. Instead, it chose to purchase a property in a P.U.D. Zone (which was surrounded by and within 200 feet of three relatively new residential apartment complexes on Lots 1, 2, and 3 of Block 4 which were benefitted by a **Bettendorf "Protest" Ordinance**) and submitted an application for a Zone Change by ordinance to C-5.

16. The adjacent apartment owners (see **Exhibit C**– Murphy and Jecklin) and Larry Whitty, the owner of Lot 1, Block 1 objected and made a successful statutory protest (**20% Rule**) against the zone change (being within 200 feet of the Planned Parenthood property), pursuant to **Bettendorf Zoning Code §24.2** and **§24.4**, which precluded the Bettendorf City Council from adopting a C-5 Zoning Ordinance unless the City Council voted 6-1 for the zone change. The City Council on March 16, 1996, voted 5-1 not to adopt the C-5 Zoning ordinance.

17. Zoning Rights are "**Vested Rights**" under Iowa Law and the **Iowa Constitution**. The 8th Circuit Court of Appeals has so held in its decision in ***Nemmers v. City of Dubuque, Iowa***, 716 F.2d 1194 (1983). Under Iowa case law, a City Council's action on a zone change request is broadly defined to be a "judicial function" which can be appealed by Writ of certiorari to the Iowa District Courts, see ***Montgomery v. Bremer County Board of Supervisors***, 299 N.W.2d 687 at 692 (Iowa Supreme Court 1980). If such an appeal is not filed within 30 days, the City Council's actions become final under Iowa law, in which case, under the **11th Amendment** and ***Huffman v. Pursue, Ltd.***, 420 U.S. 592 at 606, fn. 18 and 19 and the progeny of ***Huffman*** (***University of Tennessee v. Elliott***, 470 U.S. 788, 92 L.Ed.2d 635, 106 S.Ct. 3220 [1986],

and ***Migra v. Warren City School Dist. Bd. of Ed.***, 465 U.S. 75, 70 L.Ed.2d 56, 104 S.Ct. 892 [1984], and ***Plough v. West Des Moines Community School District***, 70 F.3d 512 at 516-517 [CA 8th 1995]), the City Council's quasi-judicial order also becomes final and ***Res Judicata*** under Federal law, because the federal courts are required to give this ***Res Judicata*** Rule the same interpretation given it by the state court.

18. On March 21, 1997, one year and two days after the City Council's denial of the zoning change, Defendant Planned Parenthood filed a Civil Rights Action under **42 U.S.C. §1983** in the U.S. District Court (pleading what is, in essence, an appeal from the Bettendorf City Council's quasi-judicial Order denying the C-5 zoning Application). Planned Parenthood did not name as defendants the adjacent apartment owners and Larry Whitty, who made the successful statutory protest.

19. The City of Bettendorf filed a Motion for a Partial Summary Judgment, pursuant to the **11th Amendment** and the ***Res Judicata*** **Doctrine**. U.S. District Judge Charles R. Wolle (egregiously) denied the city's ***Res Judicata*** Plea. Upon the conclusion of the Federal trial, Judge Wolle entered a judgment which purported to rezone the property to C-5 Zoning.

20. Petitioner Murphy timely moved to intervene (immediately after the City of Bettendorf announced its decision not to act as "***parens patria***" and pursue an appeal from the Judgment of U.S. District Court Judge Wolle), and within the appeal time period, for the purpose of appealing U.S. District Court Judge Wolle's Judgment on **11th Amendment** (lack of subject matter) jurisdictional and other grounds, including his denial of Bettendorf's Summary Judgement Motion on a plea of ***Res Judicata***.

21. U.S. District Court Judge Wolle ruled (cursorily

and egregiously) on Petitioner Murphy's extensive pleadings: (1) that the Intervention Motion was "untimely", (2) refused to address the merits of Petitioner's right to mandatory intervention, and the **11th Amendment** Jurisdictional and ***Res Judicata*** issues raised by Murphy at the time of Murphy's Intervention Motion, and (3) further refused to set such matters for oral argument.

22. In the Court of Appeals below, Petitioner Murphy sought judicial relief from Judge Wolle's arrogation of Federal Judicial Power in two separate forms: by the filing of a direct appeal and by the filing of a verified complaint in an original Petition for Writ of Mandamus in the 8th Circuit Court of Appeals, pursuant to **28 U.S.C. §1651(a)**.

23. In a highly unorthodox ruling, the Court of Appeals treated the Appellant's Opening Brief on the direct appeal and the original petition for a prerogative writ of mandamus as though they had been consolidated, and in a brief single order, denied the Petition for Writ of Mandamus without an opinion and summarily affirmed Judge Wolle's Judgment, also without opinion. The Court of Appeals thereafter also denied a Petition for Rehearing and Suggestion for Rehearing En Banc in each of the two cases. The U.S. Supreme Court refused to issue its discretionary Writ of Certiorari to review such erroneous rulings.

24. Petitioner Murphy contends that the **11th Amendment** and the **Doctrines** of ***Res Judicata*** and ***Stare Decisis*** control this litigation and that both of the Federal Courts were in error in their refusal to address the issue of "lack of subject matter jurisdiction" of the Federal Courts under the **11th Amendment** claim. See ***Steel Co. v. Citizens for a Better Environment***, 523 U.S. 83, 140 L.Ed.2d 210, 118 S.Ct. 1003 (March 4, 1998), at **Point III** (duty to address the questions of subject matter jurisdiction as the first order of business, and on its own motion, if the parties to the lawsuit do not bring the

matter to the trial court's attention); ***Puerto Rico Aqueduct and Sewer Authority v. Metcalf and Eddy, Inc.***, 121 L.Ed.2d 605 at 610, 506 U.S 139, 113 S.Ct. 684 (1993) (creating a new **Rule of Court** re the issue "lack of subject matter jurisdiction"), ***Wisconsin Dept. of Correction v. Schacht***, 524 U.S. ___, 141 L.Ed.2d 364 at 375-378, 118 S.Ct. ___, No. 97-461 (June 22, 1998) (Associate Justice Kennedy's concurring opinion re the issue of "lack of subject matter jurisdiction"). See ***Kerr v. U.S. District Court***, 426 U.S. 394, 48 L.Ed.2d 725, 96 S.Ct. 2119 (1976); ***Will v. U.S.***, 389 U.S 90, 19 L.Ed.2d 305, 88 S.Ct. 269 (1967); and **Supreme Court Practice**, 7th Ed., Stern, Gressman Shapiro, Geller, at page 495.

25. Plaintiff Murphy further contends: (1) that he is entitled to a Declaratory Judgment in the District Court of Iowa which holds that, under Iowa Law, the Bettendorf City Council's action on the above zone change is a "judicial" function which became final when Defendant Planned Parenthood did not perfect an appeal to the Iowa District Court by Writ of Certiorari within 30 days of the date on which the City Council acted; (2) that the record shows that the adjacent apartment owners made a successful statutory protest which precluded the Bettendorf City Council from adopting a C-5 Zoning Ordinance unless the City Council voted 6-1 for the Zone Change, and that the City Council on March 19, 1996 voted 5-1 not to adopt the C-5 Zoning Ordinance; (3) that pursuant to such successful protest, the adjacent apartment owners acquired "**vested rights**" in the City Council's Final Order (judgment); and (4) that the City Council's final order which denied the C-5 Zoning Application was and is a final judgment which, under Iowa law and the **Constitutional Doctrine of *Res Judicata*** was and is entitled to recognition by the U.S. District Court, the 8TH Circuit Court of Appeals and the U.S. Supreme Court.

26. Murphy believes and avers that the Bettendorf City Attorney, Greg Jaeger, will acknowledge on behalf of the

Defendant Bettendorf: (1) that the adjacent property owners did make a successful protest under the **Bettendorf "Protest" Ordinance**, which reads as follows:

> "24.4 In case the commission does not approve the proposal or in case of a protest against such change signed by twenty (20) percent or more of one or more of the following groups:
>
> " (a) Property owners of the lots included in such proposed change.
>
> " (b) Property owners immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred (200) feet therefrom (excluding street right-of-way).
>
> " (c) Property owners immediately adjacent in the front thereof extending the depth of one lot or not to exceed two (200) feet therefrom (excluding street right-of-way).
>
> " (d) Property owners immediately adjacent to any and all sides (including the front and rear sides) of the proposed change extending one lot or not to exceed two hundred (200) feet therefrom (excluding street right-of-way).
>
> " Such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of all the members of council.";

(2) that the **"Protest" Ordinance** is constitutionally valid and was validly applied; and (3) that the **Doctrine of *Res Judicata***

as pleaded by Defendant Bettendorf in the Federal Civil Rights lawsuit did, in fact, require that the Civil Rights action which was filed in the U.S. District Court be dismissed for lack of subject matter jurisdiction under the 11th **Amendment** and ***Huffman***, supra.

27. Murphy further avers that, upon the successful termination of the Declaratory Judgment proceedings before this Court, Plaintiff intends to file a Declaratory Judgment Action in the U.S. District Court to have Judge Wolle's Judgment vacated on the ground that the Federal District Court lacked **Article 3, §2** subject matter jurisdiction under the 11th **Amendment**, and the U.S. Supreme Court's ***Huffman*** **Abstention Doctrine**, ***Rooker-Feldman*** **Abstention Doctrine**, ***Res Judicata*** **Doctrine**, and the ***Stare Decisis*** **Doctrine**, and for other reasons which have been made of record in the U.S. District Court, the U.S. Court of Appeals for the 8th Circuit, and the U.S. Supreme Court; and if necessary, will petition the U.S. Supreme Court for a Writ of Certiorari on the 11th **Amendment** issue and Substantial Federal Questions which have been presented to the U.S. Supreme Court by the conflict in the determination of this issue by the State of Iowa and Federal Judiciary. See, in this regard, the copy of the pleadings on file in the U.S. Court of Appeals for the 8th Circuit and in the U.S. Supreme Court which are being lodged concurrently with the Clerk of this Court by Petitioner Murphy.

28. No other adequate remedy other than that herein prayed for exists by which the rights of the parties hereto may be determined; in that (1) U.S. District Court Judge Wolle has egregiously (willfully, knowingly and wrongfully) denied Petitioner Murphy's lawful right to intervene in the Federal Civil Rights action of Defendant Planned Parenthood, as an indispensable party; in order that he might appeal the (egregiously) erroneous judgment of Judge Wolle which created the opportunity for Planned Parenthood to engage in a course of conduct which constitutes a breach of **Bettendorf Zoning**

Code §24.2 and **§24.4** and Paragraph 3 of the Restrictive and Protective Covenants; (2) the Court of Appeals for the 8th Circuit refused to entertain Petitioner Murphy's appeal from Judge Wolle's erroneous judgment and a Petition for Writ of Mandate; and (3) the U.S. Supreme Court refused to exercise its discretionary review of the Federal Court record by Writ of Certiorari. Because Murphy was wrongfully denied the right to intervene in the Federal Civil Rights lawsuit, he is not bound by Judge Wolle's Judgment in the Civil Rights action under the **Doctrine of *Res Judicata***; see ***International Union v. Scofield*** 382 U.S. 205, 15 L.Ed.2d 272 (1965).

29. Murphy avers and contends that the Restrictive and Protective Covenants which were established by the Defendant Middle Road Investors, Inc. on April 3, 1973 at the time of the platting of Block 1 (see Petition at **Exhibit D-1** through **D-11**) and re-established and confirmed by the Defendant Middle Road Investors, Inc. on January 20, 1976 as the owner and proprietor of Lot 3 of Block 4, as set forth at **Exhibit A-2** and **A-3** to this Petition, run with the land and were fully operational and binding on all parties during the period January 20, 1976 through January 1, 1993; and on that date were automatically extended for an additional ten year period from January 1, 1993 through January 1, 2003 by the provision of paragraph 11 of the Restrictive and Protective Covenants (see **Exhibit D-6** and **D-7**) and were and are presently operative and binding on all parties, including the Defendant Planned Parenthood of Greater Iowa, Inc. from and after April 14, 1997, when Planned Parenthood received title to such property by Warranty Deed from Kenneth J. Versman, etc. (see Petition at paragraph 11 on page 6 of the Petition and Document 09482-97, dated April 14, 1997 and recorded April 24, 1997 at **Exhibit I** to this Petition [last in order]).

30. Defendant Planned Parenthood's projected use of such property in the face of the successful protest of the Bettendorf residents adjoining such property under **Bettendorf**

"Protest" Zoning Code §24.2 and **§24.4** constitutes an immediate and continuing breach of Paragraph 3 of the Restrictive and Protective Covenants which requires that "No obnoxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be, or become, an annoyance or nuisance to the other lot owners in said addition." (Our emphasis.)

31. Petitioner has no adequate remedy at law to compensate for the harm to the reputation and contemporary community standards of the City of Bettendorf, Iowa which flows from the knowledge of the general public that land in Bettendorf, Iowa, a Home Rule City, which is adjacent and within 200 feet of an existing residential neighborhood is being used for the conduct of early abortions, late term abortions, and partial birth abortions also known and referred to as "infanticide". Under these facts and circumstances, and upon this record, Defendant Planned Parenthood must be held to be engaged in a trade which is "obnoxious" and "offensive" as a matter of law under the terms of paragraph 3 of the Restrictive and Protective Covenants (see **Exhibit D-5** to this Petition); and is both a public and private nuisance under the **English Common Law**, the early **American Common Law**, the **Statutes of the State of Iowa** and the **"Protest" Zoning Code, §24.2** and **§24.4** of the City of Bettendorf. The Defendant's continuous breach of said Covenant and maintenance of a public and private nuisance will result in irreparable harm to the value of Petitioner's land and the pecuniary amount of such damage, which is impossible to ascertain, warrants the issuance of a preliminary injunction.

QUESTIONS PRESENTED FOR THE IOWA DISTRICT COURT ON THIS PETITION FOR A DECLARATORY JUDGMENT.

1. Whether **Bettendorf Zoning Code §24.2**

and §24.4 are constitutional on their face?

2. Whether the order of the Bettendorf City Council which denied the Planned Parenthood Zone Change Application from P.U.D. to C-5 zoning by a 5-1 vote is ***Res Judicata*** under Iowa law because Planned Parenthood did not timely appeal such order to the Iowa District Court by Writ of Certiorari?

3. Whether that part of the record which shows that three of the adjacent property owners (Clarence Murphy [Petitioner], owner of Lot 3, Block 4, Lois Jecklin, owner of Lots 1 and 2 of Block 4, and Larry Whitty, owner of Lot 1, Block 1) made a successful statutory protest under **Bettendorf Zoning Code §24.2** and **§24.4**, mandates a ruling by this Court that the zoning on the Planned Parenthood property under Iowa law is "P.U.D." and remains as "P.U.D."?

CONCLUSION

The complex propositions of Iowa Zoning law which are framed by this Petition provide irrefutable, positive proof: (1) that legal issues involving the zoning laws of a state are "important state matters" which are protected by the **11th Amendment** and the ***Huffman*** **Abstention Doctrine**, and (2) that a U.S. District Judge lacks "subject matter jurisdiction" of such issues which, according to the laws of probability, will be decided differently for each state based upon the Judicial Policy of the state which is affected. The U.S. Supreme Court has held in the ***Huffman*** cases that, pursuant to the ***Res Judicata*** **Doctrine**, the U.S. District Court must extend to such State Court judgments the interpretation given by the State Court Judiciary (the equivalent of the "**Full Faith and Credit**" provision of the **Federal Constitution** which governs the responsibility of the Judiciary of State Courts to acknowledge the judgments of the Judiciary of other State Courts).

WHEREFORE, Petitioner prays that judgment be entered against the Defendants:

1. For a Declaration, pursuant to Iowa Law, that the Bettendorf City Council's action on Planned Parenthood's Zone Change Application from PUD to C-5 Zoning is a judicial function which became final when Defendant Planned Parenthood did not perfect an appeal to the Iowa District Court by Writ of Certiorari within 30 days of the date on which the City Council acted on such Application; that the record shows that the **"Protest" Ordinance** is constitutional and was applied in a constitutional manner; that pursuant to said successful protest, the adjacent property owners acquired **"vested rights"** in the City Council's Final Order (judgment); that the City Council's denial of the C-5 Zoning Application, under the constitutional **Doctrine of *Res Judicata*** is a Final Judgment and that the Zoning on the Planned Parenthood property under Iowa law is "P.U.D." as enacted by the Bettendorf City Council.

2. That during the pendency of this action, a preliminary injunction issue to enjoin and restrain the Defendant Planned Parenthood from the acts and conduct aforesaid.

3. That the Defendant Planned Parenthood be restrained and enjoined from violating and continuing to violate and breach **Bettendorf "Protest" Ordinance §24.2** and **§24.4** and Paragraph 3 of the Protective Covenants that runs with Lot 3 of Block 4 during the time the same is to remain in force and effect;

4. For costs, and attorneys fees and other relief as provided above; and

5. For such other and further relief as the Court

may deem proper.

DATED: January ___, 2000

Respectfully submitted,

_____

Clarence J. Murphy, Plaintiff

VERIFICATION

State of California)
} SS:
Los Angeles County)

Declaration under Penalty of Perjury, Pursuant To California Code of Civil Procedure §2015.5

I am the attorney for Plaintiff Clarence J. Murphy and as such attorney, the facts as pleaded in the above Petition are more fully known to me. I therefore make this Declaration and declare under penalty of perjury under the laws of California that the forgoing **First Amended Petition for a Declaratory Judgment and an Injunction** is true and correct.

Dated: January 31, 2000
Location: 9055 La Tuna Canyon Road
La Tuna Canyon, California 91352-2221

/S/

James J. Clancy, California Bar No. 26946
9055 La Tuna Canyon Road
La Tuna Canyon, California 91352-2221
(818) 352-2069 Fax: (818) 352-6549

Attorney for Petitioner Clarence J. Murphy

CONTINUATION OF ABSTRACT OF TITLE

To

Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa.

From December 26, 1975 at 5 o'clock P.M. to and including February 4, 1976 at 5 o'clock P.M.

No. 50.

MIDDLE ROAD INVESTORS, INC., and CITY OF BETTENDORF, IOWA,	)	PLAT OF LOT 3 OF BLOCK 4 OF QUAD CITY TECHNOLOGICAL CENTER, A PLANNED UNIT DEVELOPMENT TO THE CITY OF BETTENDORF, IOWA.
To	)	
THE PUBLIC.	)	Dated: Jan. 20, 1976. Ack'd: Jan. 20, 1976. Filed: Feb. 4, 1976. Rec'd: Doc. #1873-76.

SURVEYOR'S CERTIFICATE:

I, Dale E. Christensen, hereby certify that I am a duly registered Land Surveyor under the laws of the State of Iowa and that I have surveyed a tract of land to be named Lot 3 of Block 4 of Quad City Technological Center to the City of Bettendorf, Scott County, Iowa, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 21; thence due South, along the East line of the Northeast Quarter of said Section 21, a distance of 744.06 feet to a point on the Northerly R.O.W. of P.U.D. Drive; thence South 71° 25' 13" West, along the Northerly R.O.W. of P.U.D. Drive, a distance of 291.00 feet to a point of curvature; thence Northwesterly along a 15.00 foot radius curve concave Northeasterly a distance of 22.31 feet to a point of reverse curvature on the Northeasterly R.O.W. of Tech Drive; thence Northwesterly along a 476.00 foot radius curve concave Southwesterly and along the Northeasterly R.O.W. of Tech Drive, a distance of 88.54 feet to a point of tangency; thence North 34° 01' 36" West, along the Northeasterly R.O.W. of Tech Drive, a distance of 108.31 feet; thence South 55° 58' 24" West a distance of 52.00 feet to a point on the Southwesterly R.L.W. of Tech Drive also being

EXHIBIT A-1

the point of beginning; thence South 34° 01' 36" East, along the Southwesterly R.O.W. of Tech Drive, a distance of 26.31 feet; thence South 44° 56' 49" West a distance of 351.90 feet; thence North 54° 19' 09" West a distance of 127.67 feet; thence North 44° 56' 49" East a distance of 388.31 feet to a point on the Southwesterly R.O.W. of Tech Drive; thence Southeasterly along a 594.00 foot radius curve concave Southwesterly and along the Southwesterly R.O.W. of Tech Drive, a distance of 100.90 feet to the point of beginning containing 1.077 acres.

Dated this 14th day of January, 1976 in Davenport, Scott County, Iowa.

(Surveyor's Seal)

Dale E. Christensen Date: 1/14/76
Ia. Reg. #5493
Collehon, Schemmer & Assoc., Inc.

DEDICATION OF OWNERS:

This is to certify that the attached Plat of Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development in and for the City of Bettendorf, Iowa is hereby made with the free consent of Middle Road Investors, Inc., and the City of Bettendorf, Iowa, as owners and proprietors of the real estate described upon the attached and foregoing plat and the Surveyors Certificate attached thereto and certifies that said Plat is made in accordance with the desire of said proprietors and said proprietors do hereby dedicate to the use of the public any and all rights it may have in and to all streets as shown on said plat.

Front yard building setback lines are hereby established as shown on the plat, between which lines and the property lines of the street, there shall be erected or maintained no buildings or structures.

A perpetual easement is hereby granted to any local public utility, cable T.V. or municipal department, their successors and assigns, within the area shown on the plat and marked "Easement" to install, lay construct, renew, operate, maintain and remove conduits, cables, pipes, poles and wires (underground), with all necessary braces, guys, anchors and other equipment for the purpose of serving

EXHIBIT A-2

the subdivision and other property with the telephone, electric and gas, cable T.V., sewer and water service as a part of the respective utility systems; also is granted, subject to the prior rights of the public therein, the right to use the streets and lots with underground service wires to serve adjacent lots and street lights, the right to cut down and remove or trim and keep trimmed any trees or shrubs that interfere or threaten to interfere with any of the said public utility equipment, and the right is hereby granted to enter upon the lots at all times for all of the purposes aforesaid. No permanent buildings or trees shall be placed on said area as shown on the plat and marked "Easement", but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or the rights herein granted.

NOW THEREFORE, Middle Road Investors, Inc. and the City of Bettendorf, Iowa, hereby declare that the real property described in the Surveyor's Certificate is and shall be held, transferred, sold conveyed and occupied subject to the Restrictive and Protective Covenants heretofore filed on April 1[illegible] 1973, as Document #5134-A with the platting of Block 4 of Quad City Technological Center shall remain in effect and apply to Lot 3 of Block 4 as platted herein.

Dated this 20th day of January, 1976.

MIDDLE ROAD INVESTORS, INC.

By Robert D. Danico
President

By C. J. Munson
Secretary

CITY OF BETTENDORF, IOWA

By William C. Glynn
Mayor

By Margaret W. Lake
Deputy City Clerk

EXHIBIT A-3

STATE OF IOWA)
) ss:
COUNTY OF SCOTT)

On this 20th day of January, 1976, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert D. Danico and C. J. Munson, to me personally known who being by me duly sworn, did say that they are the President and Secretary respectively of said corporation and that the seal affixed thereto is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and that the said Robert D. Danico and C. J. Munson, as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

(Notarial Seal)

Judith L. Moore
Notary Public in the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF SCOTT)

On this 20 day of January, 1976, before me the undersigned, a Notary Public in and for said County, personally appeared William C. Glynn and Margaret W. Lake, each to me personally known, who being by me duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of said City of Bettendorf, a Municipal Corporation, of Scott County in the State of Iowa; that the seal affixed to the said instrument is the seal of said corporation by authority of its City Council; and the said William C. Glynn and Margaret W. Lake each acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by each of them and by it voluntarily executed.

(Notarial Seal)

Russell Ellis
Notary Public in the State of Iowa

EXHIBIT A-1

CERTIFICATE OF COUNTY TREASURER:

I, Ken W. Gaines, Treasurer of Scott County, Iowa, hereby certify that the land laid out into a Planned Unit Development covered by the Plat hereto attached, known and designated as Lot 3 of Block 4 of Quad City Technological Center to the City of Bettendorf, Iowa, is free from taxes payable to Scott County, Iowa, except for special assessments for sewer and paving.

Witness my hand this 20th day of January, 1976.

Ken W. Gaines, Treasurer

By Myrtle Wertz
Deputy

CERTIFICATE OF ATTORNEY AT LAW:

I, John S. Gosma, Attorney at Law, a member of the firm of Doerr, Rehling and Lindburg, do hereby certify that I have examined the abstract of title to the land embraced in the attached plat and described in the accompanying certificate of Dale E. Christensen, registered land surveyor, and from such examination find that the City of Bettendorf, Iowa, has good fee simple title to said real estate subject to a contract to Middle Road Investors, Inc., and that said land is free from encumbrances, except for sewer and paving assessments.

Dated at Davenport, Iowa, this 20th day of January, 1976.

DOERR, REHLING AND LINDBURG

By John S. Gosma

EXHIBIT A-5

CERTIFICATE OF COUNTY RECORDER:

I, Richard F. Hagen, Recorder of Scott County, Iowa, do hereby certify that the title in fee to the land covered by the plat hereto attached, known and designated as Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, is in the City of Bettendorf, Iowa, and Middle Road Investors, Inc., and that said title is free from encumbrances.

Witness my hand and seal of my office hereunto affixed this 20 day of January, 1976.

Richard F. Hagen
Recorder

CERTIFICATE OF CLERK OF DISTRICT COURT:

I, David H. Dahlin, Clerk of the District Court of the State of Iowa in and for Scott County, hereby certify that the land covered by the annexed plat known and designated as Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development, to the City of Bettendorf, Iowa, is free from all judgments, attachments, mechanic's liens, or other liens, as appears by the records of my office.

Witness my hand and the official seal of my office, this 20 day of January, 1976.

David H. Dahlin
Clerk

By Marie H. Lemburg
Deputy

EXHIBIT A-6

ACCEPTANCE BY CITY OF BETTENDORF, IOWA:

We, the undersigned, William C. Glynn, Mayor, and James W. Strieck, City Clerk of the City of Bettendorf, Iowa, do hereby certify that the following resolution was passed and adopted by the City Council of the City of Bettendorf, Iowa, on the 20th day of January, 1976, and duly approved on the same day by the Mayor of said City:

RESOLUTION OF ACCEPTANCE
BY CITY OF BETTENDORF

Resolved by the City Council of the City of Bettendorf:

That the Final Plat of Lot 3 of Block 4, of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, as filed with the City Clerk of said City by Middle Road Investors, Inc. and the City of Bettendorf, Iowa be and the same is hereby approved and accepted; and that the Mayor and City Clerk be and they are hereby authorized and instructed to certify to the adoption of this resolution upon said plat as required by law.

Witness our hands and the seal of the City of Bettendorf, Iowa, impressed hereon, this 20th day of January, 1976.

William C. Glynn
Mayor of the City of Bettendorf, Iowa

Margaret W. Lake
Deputy Clerk of the City of
Bettendorf, Iowa.

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EXHIBIT A-7

No. 51.

MIDDLE ROAD INVESTORS, INC.,

To

CITY OF BETTENDORF, IOWA.

ASSESSMENT WAIVER.

Dated: Jan. 20, 1976.
Ack'd: Jan. 20, 1976.
Filed: Feb. 4, 1976.
Rec'd: Doc. #1874-76.

Recites that Middle Road Investors, Inc. has this date filed with the Clerk of the City of Bettendorf, Iowa, a Plat for Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development in the City of Bettendorf, Iowa.

Recites that it is agreed by Middle Road Investors, Inc. that at such time as sidewalks or other conventional type of subdivision improvements are needed, the City of Bettendorf, Iowa, shall install said improvements and assess the cost of the same in the prescribed manner against the property comprising said Lot 3 of Block 4 of Quad City Technological Center in accordance with the local requirements regarding special assessments.

Said Middle Road Investors, Inc., being the sole owner of Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, hereby waives all notices and rights of protest to the ordering of said improvements and assessing the cost thereof against the subdivided property even though the cost thereof may exceed the amount that can legally be assessed by the City of Bettendorf, Iowa, against the subdivided property and agree to be responsible for such differences and agree to permit the assessment of the entire cost of all of said improvements against the subdivided property. This waiver shall become null and void at the time the original subdivision improvements are completed and accepted by the City.

Executed for Middle Road Investors, Inc. by Robert D. Danico, President, and C. J. Munson, Secretary, with corporate seal affixed.

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EXHIBIT A-8

No. 52.

There are no Judgments in the District Court of the State of Iowa in and for Scott County against City of Bettendorf, Iowa or Middle Road Investors, Inc. during the period covered herein; and there are no Mechanic's Liens, Encumbrances or Suits Pending affecting the title to the real estate under examination to which said City or said corporation is party, except as shown herein.

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No. 53.

T A X E S

COUNTY, STATE and CITY OF BETTENDORF:

1974 - Paid.

Block 4 Quad City Technological Canter:
Paving Assessment
426,348 square feet-Total Assessment
$63,516.84.

Sanitary Sewer Assessment
426,348 square feet -Total Assessment
$7,194.90.

NO FURTHER SPECIAL ASSESSMENTS.

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EXHIBIT A-9

CERTIFICATE

We, Vollertsen & Britt, P.C., hereby certify that the foregoing is a true and correct Continuation of Abstract of Title to the real estate described in the caption thereof, from December 26, 1975 at 5 o'clock P.M. to and including February 4, 1976 at 5 o'clock P.M. as shown by the records of Scott County, Iowa.

We further certify that there are no Judgments, Suits Pending, Bankruptcy Proceedings, Notices of Tax Liens or Other Liens in the District Court of the United States for the Southern District of Iowa, Davenport Division, affecting the title to the real estate under examination during the period covered herein.

Dated at Davenport, Iowa, this 4th day of February, 1976 at 5 o'clock P.M.

VOLLERTSEN & BRITT, P.C.

By Dennis J. Britt

Attorneys and Abstracters.

EXHIBIT A-10

CONTINUATION OF ABSTRACT OF TITLE

To

Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Scott County, Iowa; from February 4, 1976 at 5 o'clock P.M. to and including February 24, 1976 at 11:30 o'clock A.M.

No. 54.

THE CITY OF BETTENDORF, IOWA, a minicipal corporation,

To

MIDDLE ROAD INVESTORS, INC.

WARRANTY DEED.

Dated: Jan. 30, 1976.
Ack'd: Jan. 30, 1976.
Filed: Feb. 18, 1976.
Rec'd: Doc. #2523-76.
Cons.: $1.00 & O.V.C.

Conveys real estate situated in Scott County, Iowa, and described as follows: Lot 3 of Block 4 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa.

Recites that this conveyance is executed in partial performance of a contract dated November 7, 1972, and recorded as Document #1947-73, records of the office of the Recorder of Scott County, Iowa.

Recites that the lien of special assessments for the subdivision improvements mentioned in said contract are hereby released against the above described real estate with the liens to remain against the remaining property not yet conveyed. Also released against said block 4 are the special assessments for Middle Road sidewalks and Maplecrest Paving.

Recites that this conveyance is exempt from transfer tax.

EXHIBIT A-11

Executed for grantor corporation by William C. Glynn, Mayor, and by James W. Strieck, City Clerk, with corporate seal affixed.

In the certificate of acknowledgment it is certified that said parties under oath stated that they are the Mayor and City Clerk, respectively, of grantor corporation, that the seal affixed is the corporate seal of said corporation; that they executed foregoing instrument as such officers in behalf of said corporation with authority of its Board of Directors as the voluntary act and deed of said corporation.

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No. 55.

MIDDLE ROAD INVESTORS, INC.,	)	WARRANTY DEED.
	)	
	)	Dated: Jan. 30, 1976.
To	)	Ack'd: Jan. 30, 1976.
	)	Filed: Feb. 18, 1976.
	)	Rec'd: Doc. #2524-76.
CLARENCE F. MURPHY and HWA CHA MURPHY, Husband and Wife, as joint tenants with full right of survivorship, and not as tenants in common.	)	Cons.: $1.00 & O.V.C.

Conveys real estate situated in Scott County, Iowa, and described as follows: Lot 3 and Block 4 of Quad City Technological Center a Planned Unit Development to the City of Bettendorf. Iowa

Executed for grantor corporation by Robert D. Danico, President, and by C. J. Munson, Secretary, with corporate seal affixed.

In the certificate of acknowledgment it is certified that said parties under oath stated that they are the President and Secretary, respectively, of grantor corporation, that the seal affixed is the corporate seal of said corporation; that they executed foregoing instrument as such officers in behalf of said corporation with authority of its Board of Directors as the voluntary act and deed of said corporation.

$26.95 Iowa Transfer Stamps affixed and cancelled.

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EXHIBIT A-12

No. 56.

CLARENCE F. MURPHY and
NWA CHA MURPHY, Husband
and Wife,

To

FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION OF MOLINE,
ILLINOIS.

MORTGAGE.

Dated: Feb. 20, 1976.
Ack'd: Feb. 20, 1976.
Filed: Feb. 24, 1976.
Rec'd: Doc. #2824-76.
Cons.: $180,000.00.

Mortgages real estate situated in Scott County, Iowa, and described as follows: Lot Number Three (3) in Block Number Four (4) Quad City Technological Center, situated in the City of Bettendorf.

Executed to secure payment of the sum of $180,000.00, with interest thereon, payable in monthly installments of $1605.00 each, commencing September 1, 1976, and due according to the terms of a promissory note of even date, herewith.

Recites that any transfer of real estate covered by this mortgage, or any part thereof, shall give mortgagee the right to declare all indebtedness secured by this mortgage immediately due and payable.

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EXHIBIT A-13

No. 57.

There are no Judgments in the District Court of the State of Iowa in and for Scott County against City of Bettendorf, Iowa or Middle Road Investors, Inc. during the period covered herein, and none against Clarence F. Murphy or Hwa Cha Murphy during the ten years immediately preceding this date; and there are no Mechanic's Liens, Encumbrances or Suits Pending affecting the title to the real estate under examination to which either of said corporations or either of said persons are party, except as shown herein.

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No. 58.

T A X E S

COUNTY, STATE AND CITY OF BETTENDORF:

(Includes other real estate)

1974 - 1st Installment Paid,
2nd Installment, Unpaid, $1844.51

NO FURTHER SPECIAL ASSESSMENTS.

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EXHIBIT A-14

C E R T I F I C A T E

We, Vollertsen & Britt, P.C., hereby certify that the foregoing is a true and correct Continuation of Abstract of Title to the real estate described in the caption thereof, from February 4, 1976 at 5 o'clock P.M. to and including February 24, 1976 at 11:30 o'clock A.M. as shown by the records of Scott County, Iowa.

We further certify that there are no Judgments, Suits Pending, Bankruptcy Proceedings, Notices of Tax Liens or Other Liens in the District Court of the United States for the Southern District of Iowa, Davenport Division, affecting the title to the real estate under examination during the ten years immediately preceding this date.

Dated at Davenport, Iowa, this 24th day of February, 1976 at 11:30 o'clock A.M.

VOLLERTSEN & BRITT, P.C.

By Anton J Sieck
Attorneys and Abstracters

EXHIBIT A-15

No. 40.

MIDDLE ROAD INVESTORS, INC. and CITY OF BETTENDORF, IOWA,	PLAT OF BLOCK 2 OF QUAD CITY TECHNOLOGICAL CENTER, INC.,A PLANNED UNIT DEVELOPMENT TO THE CITY OF BETTENDORF, IOWA.
To	
THE PUBLIC.	Dated: July 1, 1975. Ack'd: July 1, 1975. Filed: July 18, 1975. Rec'd: Doc.#11038-75.

SURVEYOR'S CERTIFICATE:

I, Dale E. Christensen, hereby certify that I am a duly licensed Professional engineer and Land Surveyor in and for the State of Iowa and that I have surveyed and prepared the attached plat, which truly and correctly represents the survey of a tract of land to be named Block 2 of Quad City Technological Center, a Planned Unit Development in and for the City of Bettendorf, Iowa, being a subdivision of the Northeast Quarter of Section 21, Township 78 North, Range 4 East of the 5th P.M. in Bettendorf, Scott County, Iowa, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 21; thence due South along the East line of the Northeast Quarter of said Section 21, a distance of 798.92 feet to the point of beginning; thence continuing due South a distance of 766.01 feet to a point on the Northerly ROW of Middle Road; thence South 53° 46' 45" West along the Northerly ROW of Middle Road a distance of 85.12 feet to a point of curvature; thence Westerly along a 15.00 foot radius curve concave Northerly, a distance of 23.32 feet; thence Northwesterly along a 919.45 foot radius curve concave Southwesterly being the Northerly ROW of Commerce Drive, a distance of 313.21 feet; thence Northerly along a 15.00 foot radius curve concave Easterly, a distance of 22.72 feet; thence Northeasterly along a 558.75 foot radius curve concave Northwesterly, being the Easterly ROW of Tech Drive, a distance of 193.38 feet; thence due North along said Easterly ROW of Tech Drive a distance of 181.26 feet to a point of curvature; thence Northerly along a 276.00 foot radius curve concave Westerly a distance of 114.56 feet; thence Northeasterly along a 15.00 foot radius curve concave Southeasterly a distance of 22.31 feet to a point of tangency; thence North 71° 25' 13" East, along the Southerly ROW of P.U.D.

EXHIBIT B-1

Drive, a distance of 273.52 feet to the point of beginning containing 4.326 acres.

Dated this 3rd day of July, 1975 in Bettendorf, Scott County, Iowa.

Dale E. Christensen
Ia. Reg. #5493
Gollehon, Schemmer & Associates, Inc.

(Surveyor's Seal)

DEDICATION OF OWNERS:

This is to certify that the attached Plat of Block 2 of Quad City Technological Center, a Planned United Development in and for the City of Bettendorf, Iowa is hereby made with the free consent of Middle Road Investors, Inc. and the City of Bettendorf, Iowa, as owners and proprietors of the real estate described upon the attached and foregoing plat and the Surveyors Certificate attached thereto and certifies that said Plat is made in accordance with the desire of said proprietors and said proprietors do hereby dedicate to the use of the public any and all rights it may have in and to all streets as shown on said Plat.

Front yard building setback lines are hereby established as shown on the plat, between which lines and the property lines of the street, there shall be erected or maintained no buildings or structures.

A perpetual easement is hereby granted to any local public utility, cable T.V. or municipal department, their successors and assigns, within the area shown on the plat and marked "Easement" to install, lay, construct, renew, operate, maintain and remove conduits, cables, pipes, poles and wires (underground), with all necessary braces, guys, anchors and other equipment for the purpose of serving the subdivision and other property with the telephone, electric and gas, cable T.V., sewer and water service as a part of the respective utility systems: also is granted, subject to the prior rights of the public therein, the right to use the str

EXHIBIT B-2

with underground service wires to serve adjacent lots and street lights, the right to cut down and remove or trim and keep trimmed any trees or shrubs that interfere or threaten to interfere with any of the said public utility equipment, and the right is hereby granted to enter upon the lots at all times for all of the purposes aforesaid... No permanent buildings or trees shall be placed on said area as shown on the plat and marked "Easement", but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or the rights herein granted.

NOW THEREFORE, Middle Road Investors, Inc., and the City of Bettendorf, Iowa, hereby declare that the real property described in the Surveyor's Certificate is and shall be held, transferred, sold, conveyed and occupied subject to the Restrictive and Protective Covenants heretofore filed on April 11, 1973 as Document #5134-73 with the platting of Block 1 of Quad City Technoligical Center shall remain in effect and apply to Block 2 as platted herein. In addition thereto, each lot owner of Lots in said Block 2 shall share the common driveways into said Block 2 from Tech Drive and P.U.D. Drive.

Dated this 1st day of July, 1975.

MIDDLE ROAD INVESTORS, INC.

By: Robert D. Danico, President

(Corporate Seal)

By: C. J. Munson, Secretary

CITY OF BETTENDORF, IOWA

By: William C. Glynn, Mayor

(Seal of City of Bettendorf, Iowa)

By: James W. Strieck, Clerk

EXHIBIT B-3

STATE OF IOWA)
) SS:
SCOTT COUNTY)

On this 1st day of July, A.D., 1975, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert D. Danico and C. J. Munson, to me personally known who being by me duly sworn, did say that they are the President and Secretary respectively of said corporation and that the seal affixed thereto is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and that the said Robert D. Danico and C. J. Munson, as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

Judith L. Moore
Notary Public in and for Scott County, Iowa

(Notarial Seal)

STATE OF IOWA)
) SS:
SCOTT COUNTY)

On this 1st day of July, A.D., 1975, before me, the undersigned, a Notary Public in and for said County, personally appeared William C. Glynn and James W. Strick, each to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk, respectively, of said City of Bettendorf, a Municipal Corporation, of Scott County in the State of Iowa; that the seal affixed to the said instrument is the seal of said corporation by authority of its City Council; and the said William C. Glynn and James W. Strick each acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by each of them and by it voluntarily executed.

Margaret W. Lake
Notary Public in and for Scott County, Iowa

(Notarial Seal)

EXHIBIT B-4

CERTIFICATE OF COUNTY TREASURER:

I, Ken W. Gaines, Treasurer of Scott County, Iowa, hereby certify that the land laid out into a Planned Unit Development covered by the Plat hereto attached, known and designated as Block 2 of Quad City Technological Center to the City of Bettendorf, Iowa, is free from taxes payable to Scott County, Iowa except for special assessments for sewer and paving. Also 1974 tax as a lien, but not payable at this date.

Witness my hand this 1st day of July, A.D., 1975.

Ken W. Gaines, Treasurer

(Seal) By: M. L. Irwin, Deputy

CERTIFICATE OF ATTORNEY AT LAW:

I, Don D. Thuline, Attorney at Law, do hereby certify that I have examined the abstract of title to the land embraced in the attached plat and described in the accompanying certificate of Dale E. Christensen, registered land surveyor, and from such examination find that the City of Bettendorf, Iowa has good fee simple title to said real estate subject to a contract to Middle Road Investors, Inc. and that said land is free from encumbrances except for the sewer and paving assessments.

Dated at Bettendorf, Iowa this 1st day of July, A.D., 1975.

Don D. Thuline

CERTIFICATE OF COUNTY RECORDER:

I, Richard F. Hagen, Recorder of Scott County, Iowa, do hereby certify that the title in fee to the land covered by the plat hereto attached, known and designated as Block 2 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, is in the City of Bettendorf, Iowa and Middle Road Investors, Inc. and that said title is free from encumbrances.

EXHIBIT B-5

Witness my hand and seal of my office hereunto affixed this 1st day of July, A.D., 1975.

Richard F. Hagen, Recorder

(Seal) By: Leona M. Petersen, Deputy

CERTIFICATE OF CLERK OF DISTRICT COURT:

I, David H. Dahlin, Clerk of the District Court of the State of Iowa in and for Scott County, hereby certify that the land covered by the annexed plat known and designated as Block 2 of Quad City Technological Center, a Planned Unit Development, to the City of Bettendorf, Iowa, is free from all judgments, attachments, mechanic's liens, or other liens, as appears by the records of my office.

Witness my hand and the official seal of my office this 1st day of July, A.D., 1975.

David H. Dahlin, Clerk

(Seal) By: Marie W. Lemburg, Deputy

ACCEPTANCE BY CITY OF BETTENDORF, IOWA:

We, the undersigned, William C. Glynn, Mayor, and James W. Strieck, City Clerk of the City of Bettendorf, Iowa, do hereby certify that the following resolution was passed and adopted by the City Council of the City of Bettendorf, Iowa on the 1st day of July, A.D., 1975 and duly approved on the same day by the Mayor of said City:

RESOLUTION OF ACCEPTANCE
BY CITY OF BETTENDORF

Resolved by the City Council of the City of Bettendorf:

That the Final Plat of Block 2 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, as filed with the City Clerk of said City by Middle Road Investors, Inc. and the City of Bettendorf, Iowa be and the same is hereby approved and accepted; and that the Mayor and City Clerk be and they are hereby authorized and instructed to certify to the adoption of this resolution upon said plat as required by law.

EXHIBIT B-6

Witness our hands and the seal of the City of Bettendorf, Iowa, impressed hereon, this 1st day of July, A.D., 1975.

William C. Glynn
Mayor of the City of Bettendorf, Iowa

(Seal of City of Bettendorf, Iowa)

James W. Strieck
Clerk of the City of Bettendorf, Iowa

----- /////// -----

No. 41.

MIDDLE ROAD INVESTORS, INC.,

To

CITY OF BETTENDORF, IOWA.

ASSESSMENT WAIVER.

Dated: July 1, 1975.
Ack'd: July 1, 1975.
Filed: July 18, 1975.
Rec'd: Doc.#11043-75.

Recites that Middle Road Investors, Inc., being the Subdivider and owner of all lots in a final plat for Block 2 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, which has this date bean filed with the Clerk of the City of Bettendorf, Iowa.

Recites that it is agreed by Middle Road Investors, Inc. that at such time as sidewalks or other conventional type of subdivision improvements are needed, the City of Bettendorf, Iowa shall put in said improvements and assess the cost of the same in the prescribed manner against the property comprising said Block 2 of Quad City Technological Center in accordance with the local requirements regarding special assessments.

Accordingly, Middle Road Investors, Inc. being the sole owner of Block 2 of Quad City Technological Center, a Planned Unit Develop-

EXHIBIT B-9

ment to the City of Bettendorf, Iowa, hereby waive all notices and rights of protest to the ordering of said improvements and assessing the cost thereof against the subdivided property even though the cost thereof may exceed the amount that can legally be assessed by the City of Bettendorf, Iowa, against the subdivided property and agree to be responsible for such differences and agree to permit the assessment of the entire cost of all of said improvements against the subdivided property. This waiver shall become null and void at the time the original division improvements are completed and accepted by the City.

Executed for Middle Road Investors, Inc. by Robert D. Danico, President and C. J. Munson, Secretary, with corporate seal affixed.

In the certificate of acknowledgment it is certified that said parties under oath stated that they are the President and Secretary, respectively, of Middle Road Investors, Inc., that the seal affixed is the corporate seal of said corporation; that they executed foregoing instrument as such officers in behalf of said corporation with authority of its Board of Directors as the voluntary act and deed of said corporation.

----- /////// -----

EXHIBIT B-8

No. 42.

CITY OF BETTENDORF, IOWA,	)	ZONING ORDINANCE.
	)	
	)	Dated: Aug. 18, 1959.
To	)	Filed: Sept. 29, 1959.
	)	Rec'd: 127 Misc., 1.
	)	
THE PUBLIC.	)	

Ordinance adopted by the City Council of the City of Bettendorf, Iowa and approved by the Mayor repealing the Zoning Ordinance of the City of Bettendorf, Iowa, passed and approved July 2, 1957 as amended, and enacting a new Zoning Ordinance. According to the terms thereof, as amended by Ordinance dated February 2, 1971 and recorded on March 8, 1971 as Document #2527-71, records of the office of the Recorder of Scott County, Iowa, the real estate under examination is designated a "PUD" Planned Unit Development District.

----- /////// -----

No. 43.

ABSTRACTERS' CERTIFICATE

Mortgages and Deeds of Trust dated twenty years or more prior to the date hereof, and all matters pertaining to the release or satisfaction thereof, have been omitted from this abstract unless the record shows that less than ten years have elapsed since the original or extended date of maturity of the secured indebtedness, or part thereof.

EXHIBIT B-1

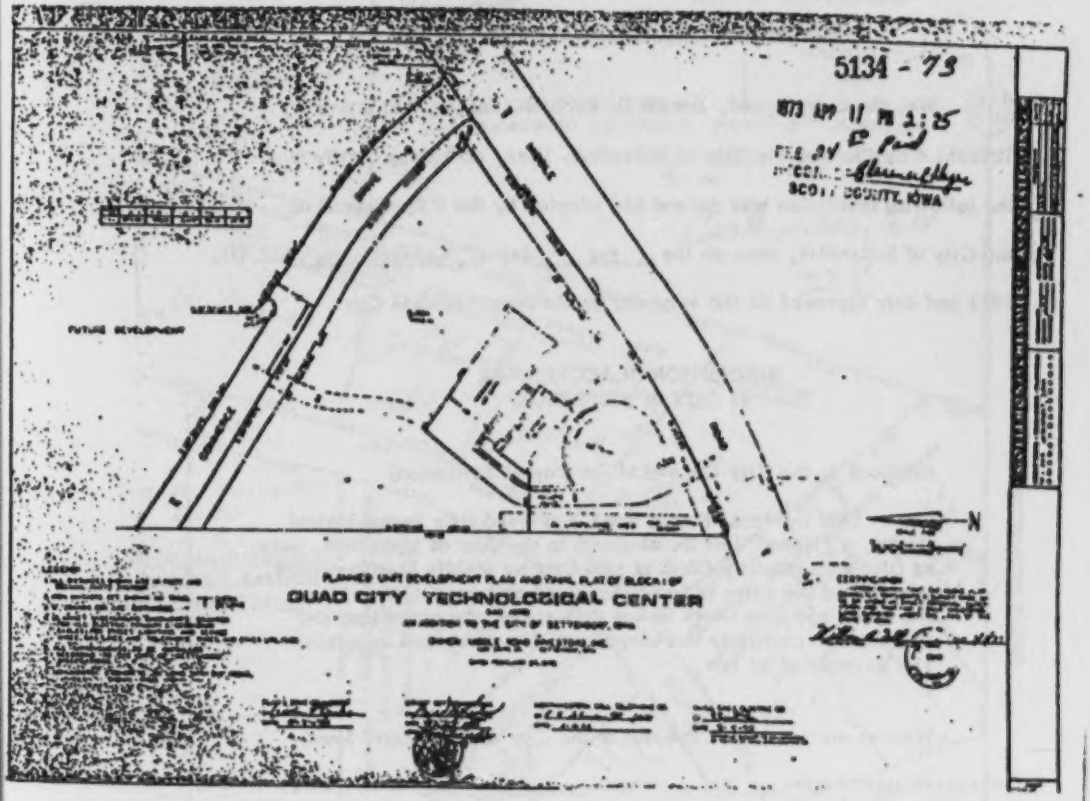


EXHIBIT C-1

ACCEPTANCE BY CITY OF BETTENDORF, IOWA

We, the undersigned, Donald D. Kucharo, Mayor, and James W. Strieck, City Clerk of the City of Bettendorf, Iowa, do hereby certify that the following resolution was passed and adopted by the City Council of the City of Bettendorf, Iowa on the 3rd day of April, A.D., 1973 and duly approved on the same day by the Mayor of said City:

RESOLUTION OF ACCEPTANCE
BY CITY OF BETTENDORF

Resolved by the City Council of the City of Bettendorf:

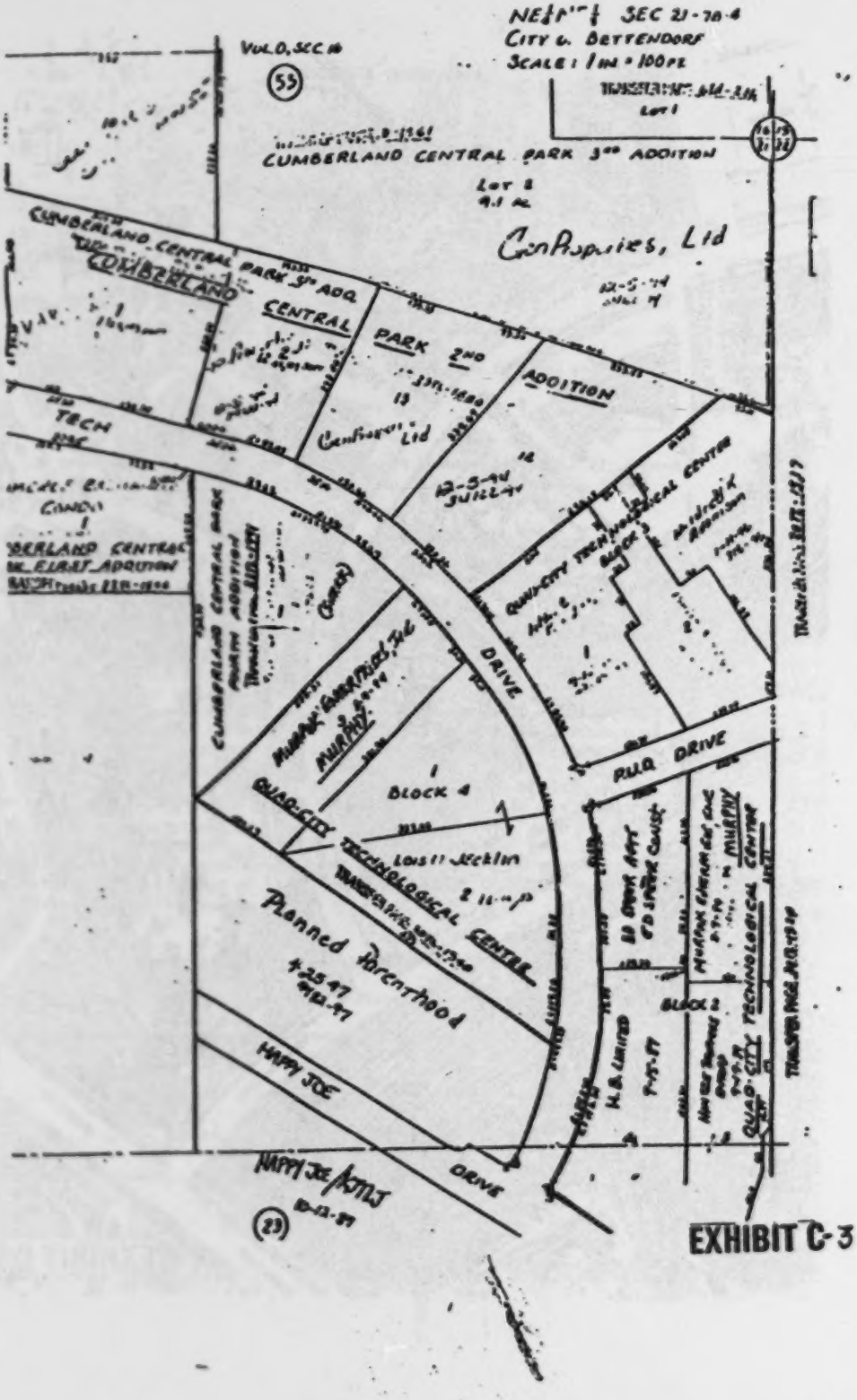
That the Final Plat of Block 1 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, as filed with the City Clerk of said City by Middle Road Investors, Inc. be and the same is hereby approved and accepted; and that the Mayor and City Clerk be and they are hereby authorized and instructed to certify to the adoption of this resolution upon said plat as required by law.

Witness our hands and the seal of the City of Bettendorf, Iowa, impressed hereon, this 3rd day of April, A.D., 1973.

Mayor of the City of Bettendorf, Iowa
Donald D. Kucharo

Clerk of the City of Bettendorf, Iowa
James W. Strieck

EXHIBIT C-2


NE¼ SEC 21-78-4
CITY OF BETTENDORF
SCALE: 1 IN = 100 FT
VOL. O, SEC 16
53
CUMBERLAND CENTRAL PARK 3RD ADDITION
LOT 2
9.1 AC
CumResources, Ltd
CUMBERLAND CENTRAL PARK 3RD ADD.
CUMBERLAND CENTRAL PARK 2ND ADDITION
TECH DRIVE
CumResources Ltd
QUAD-CITY TECHNOLOGICAL CENTER
CUMBERLAND CENTRAL PARK FIRST ADDITION
CUMBERLAND CENTRAL PARK FIRST ADDITION
PLUM DRIVE
BLOCK 4
QUAD-CITY TECHNOLOGICAL CENTER
Planned Parenthood
HAPPY JOE
HAPPY JOE ACRES
23
EXHIBIT C-3

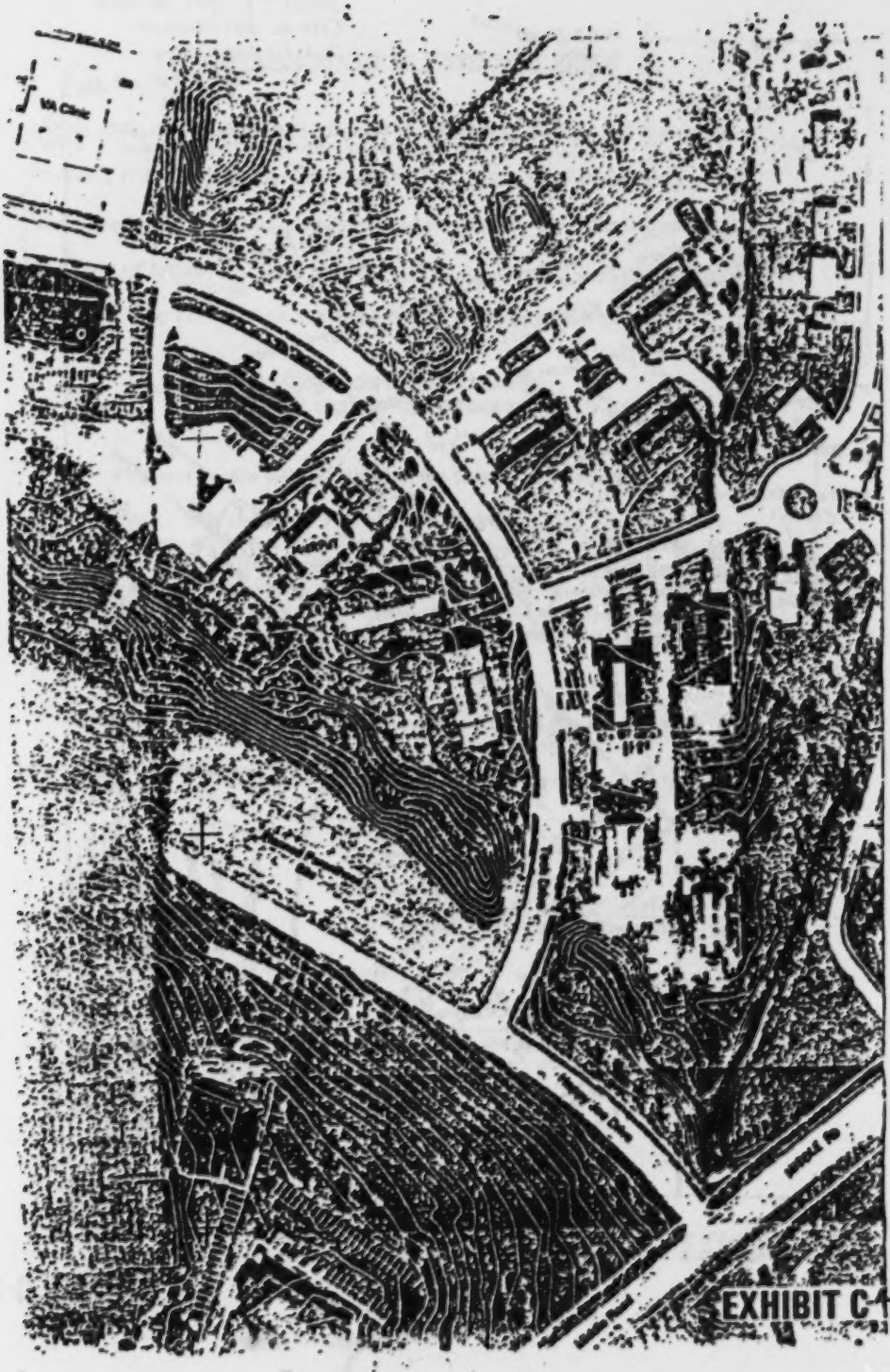


EXHIBIT C-1

SURVEYOR'S CERTIFICATE

TO

QUAD CITY TECHNOLOGICAL CENTER, INC.

A Planned Unit Development

to

THE CITY OF BETTENDORF, IOWA

I, William A. Fell, a Land Surveyor registered under the laws of the State of Iowa, do hereby certify that I have surveyed and laid out a tract of land described as follows:

A tract of land in part of the Northeast Quarter of Section 21, Township 78, North, Range 4 East of the 5th P.M., City of Bettendorf, Iowa, described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 21; thence South (assumed bearing) along the East line of the Northeast Quarter of said Section 21 a distance of 1564.93 feet; thence South 53°46'45" West along the Northerly Right of Way of Middle Road a distance of 85.0 feet to the point of beginning; thence continuing South 53°46'45" West along the Northerly Right of Way of Middle Road a distance of 430.89 feet to a point of curvature; thence Southwesterly along 1382.4 feet radius curve concave northerly a distance of 350.69 feet to a point of tangency; thence South 68°18'45" West a distance of 68.46 feet; thence North 08°06'19" East a distance of 931.66 feet; thence South 58°25'11" East a distance of 393.53 feet to a point of curvature; thence Northerly on a 15 foot radius curve concave westerly a distance of 23.56 feet to a point of tangency; thence North 31°34'49" East a distance of 3.00 feet; thence South 58°25'11" East a distance of 30.64 feet to a point of curvature; thence Southeasterly on a 919.43 feet radius curve concave Southwesterly a distance of 241.52 feet to a point of reverse curve; thence Easterly on a 15 foot radius curve concave Northerly a distance of 23.32 feet to the point of beginning containing 8.418 acres.

I further certify that the attached plat of Block 1 of Quad City Technological Center, Inc., a Planned Unit Development to the City of Bettendorf, Iowa correctly represents said survey and development.

Dated at Bettendorf, Iowa this 3rd day of April, 1971.

EXHIBIT D-1

CERTIFICATE OF ATTORNEY AT LAW:

I, Don Douglas Thuline, Attorney at Law, do hereby certify that I have examined the abstract of title to the land embraced in the attached plat and described in the accompanying certificate of William A. Fe[illegible], registered land surveyor, and from such examination find that Middle Road Investors, Inc. has good fee simple title to said real estate and that said land is free from encumbrances.

Dated at Bettendorf, Iowa, this 3rd day of April, A.D., 1973.

Don Douglas Thuline

ACCEPTANCE BY CITY OF BETTENDORF, IOWA:

We, the undersigned, Donald D. Kucharo, Mayor, and James W. Strieck, City Clerk of the City of Bettendorf, Iowa, do hereby certify that the following resolution was passed and adopted by the City Council of the City of Bettendorf, Iowa on the 3rd day of April, A.D., 1973 and duly approved on the same day by the Mayor of said City:

RESOLUTION OF ACCEPTANCE
BY CITY OF BETTENDORF

Resolved by the City Council of the City of Bettendorf:

That the Final Plat of Block 1 of Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, as filed with the City Clerk of said City by Middle Road Investors, Inc. be and the same is hereby approved and accepted; and that the Mayor and City Clerk be and they are hereby authorized and instructed to certify to the adoption of this resolution upon said plat as required by law.

Witness our hands and seal of the City of Bettendorf, Iowa, impressed hereon, this 3rd day of April, A.D., 1973.

Donald D. Kucharo
Mayor of the City of Bettendorf, Iowa

(Seal of City of Bettendorf, Iowa)

James W. Strieck
Clerk of the City of Bettendorf, Iowa

EXHIBIT D-2

RESTRICTIVE AND PROTECTIVE COVENANTS

MIDDLE ROAD INVESTORS, INC., an Iowa Corporation, hereby establish and declare the following restrictive and protective covenants to be applicable to the following described real estate located in Scott County, Iowa, to-wit: All lots in Blocks 1 through 6 of The Planned Unit Development known as Quad City Technological Research Center, to the City of Bettendorf, Iowa, which plat is recorded as Document No. 5134-73 in the office of the Recorder of Scott County, Iowa:

1. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by a majority of the architectural contract committee hereinafter called the Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Said architectural contract committee shall consist of Two (2) Directors from the Subdivider, Middle Road Investors, and one additional member who shall be an owner or agent of an owner of a lot in said addition chosen by the majority of the lot owners. The Committee may refuse to approve such plans and specifications and lot plan if the building, structure or improvement to be made, constructed or installed in accordance therewith would not in the judgment of a majority of the Committee (a) comply in all respects with the conditions, limitations, reservations, restrictions and covenants herein set forth and be suitable for a use permitted by them, (b) be located on said lot so as to conform with the topography and finished ground elevation, to be as close to front building lines as necessary to attain reasonable uniformity of set-back in no case less than 30 feet with neighboring buildings and to provide for reasonably adequate rear yard

EXHIBIT D-3

case less than 25 feet and to be sufficiently far from side lot lines to provide reasonably adequate side yards, in no case less than ten feet in width, and (c) be constructed in such manner and of such materials and according to such external design as would promote the development of said Addition, of high quality and conform to the character of and harmonize architecturally with other buildings then existing on the numbered lots in said Addition.

Approval by the Committee of such building plans and specifications and lot plan shall not be required (1) if a majority of the Committee fail either to approve or disapprove such building plans and specifications and lot plan within thirty days after submission of the same to the Committee, or (2) in any event, and regardless of whether such plans, specifications and lot plan have been approved by the Committee and regardless of whether the same have been submitted to the Committee for approval if no suit to enjoin such erection, construction or installation has been commenced prior to the completion of construction as evidenced by the issuance and recordation of an occupancy permit by the Building Inspector of the City of Bettendorf, Iowa. Following completion of construction of said building upon any tract or parcel of property which constitutes a single building site, as evidenced by the issuance and recordation of an occupancy permit as hereinabove provided, the Committee shall have no further jurisdiction over any improvements constructed or erected upon said tract or parcel of property but the remainder of these covenants and restrictions shall remain in full force and effect.

2. No trailer, basement, tent, shack, or temporary structure shall be allowed upon any of said lots nor shall any trash, garbage, ashes or other refuse be thrown or dumped on any lot, however, that nothing herein shall be construed or prohibit storage on a

EXHIBIT D-4

reasonable time of such building materials as are necessary during and in connection with the construction of a building, structure, improvement, alteration or addition in accordance with the approval of the Architectural Committee, except as might be reasonably necessary for trash pickup by the City. There shall be no outside storage allowed in connection with any use of any lot in said addition and the title holder of each lot, vacant or improved, shall keep its lot or lots free of weeks, trash and debris.

3. No obnoxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the other lot owners in said addition.

4. The Subdivider shall grade and landscape the "common open space" area shown on the plat within a year following the approval of the Final Development Plan including the same; the lot owners of the numbered lots in such Quad City Technological Center shall maintain said "common open space".

5. The Subdivider shall install sidewalks in the "public walk easements" as shown on the plat at such time as the streets within each addition are constructed; the owners of lot or lots abutting said public walk easements" shall maintain said sidewalks.

6. The Subdivider shall landscape and, where designated, provide a planting screen in accordance with the applicable regulations of the Zoning Ordinance of the City of Bettendorf in the "landscaped areas" shown on the plat. The planting screen shall be installed within one year following the approval of the final planned unit development plan or before the occupancy of any lot in the addition whichever is sooner and the landscaping shall be installed on each lot prior to the occupancy of the lot(s) where said areas are located. The owners of lot or lots abuting said areas shall maintain said screen and/or landscaping.

EXHIBIT D-5

7. The Subdivider shall install street lights so that the light is reflected downward and all lot owners shall install all parking lot and building lights with the light reflecting downward and shielded such that no direct rays of light from the light source are transmitted into adjacent residence districts.

8. All signs shall be submitted to the Architectural Committee for approval and shall conform to the requirements of the sign ordinance of the City of Bettendorf, Iowa, in existance or as hereinafter amended.

9. No lot shall be subdivided or any portion thereof sold without the prior approval of the Architectural Committee.

10. There will be no loading or unloading of freight, trash or garbage between the hours of 9:00 P.M. and 6:00 A.M.

11. These restrictions shall be in force from the date of the Owner's Certificate to which it is an exhibit until January 1, 1993 or until such later date to which the same may be extended as hereinafter provided, and shall run with and be binding upon all lots in said addition, and every part thereof and shall be appurtenant to and for the benefit of all said lot owners. These restrictions shall be automatically extended for an additional ten-year period on January 1, 1993, and each ten year anniversary of said date unless a written instrument signed and acknowledged by the owners of a majority of all the lots in Quad City Technological Center shall prior to such date or anniversary be recorded with the Recorder of Scott County, Iowa, abrogating or modifying the same in whole or in part to the extent therein set forth. In determining the majority of said lot owners, each lot shall be entitled to one vote to be cast according to the will of a majority in interest of any co-owners having interest therein whether such majority is represented by a majority of the undivided interests in an entire lot or ownership of the greate

EXHIBIT D-6

of a subdivided lot. A contract purchaser or life tenant of the legal title shall be deemed the owner. In all other respects, ownership shall refer to record ownership of legal title.

11. Invalidity, abandonment or waiver of any one or more of these restrictions shall in no wise affect any of the other restrictions, which shall remain in full force and effect.

12. In the event any person who may at any time own or occupy any of the numbered lots, or part thereof, in said Addition should violate or threaten to violate any of these restrictions, said Middle Road Investors, Inc., its successors and assigns, and the owners from time to time of any of the numbered lots in said Quad City Technological Center shall have the right to proceed in any court of law or equity, by injunction or otherwise, to enforce performance and restrain violation, or pursue any other remedy to which it or they may be entitled and shall have the right to collect from the party or parties violating or threatening to violate the same, either jointly or severally, all damages, costs, expenses and counsel fees resulting from the violation thereof, or incurred in, or in connection with, said proceedings.

Dated at Bettendorf, Iowa this 3rd day of April, 1973.

Middle Road Investors, Inc.

By: Robert D. Danico
President

(Corporate Seal)

By: C. J. Munson
Secretary

STATE OF IOWA)
)
COUNTY OF SCOTT)

On this 3rd day of April, 1973, before me, the undersigned, a Notary Public in and for Scott County, Iowa, personally a

EXHIBIT D-7

Robert D. Danico, President, and C. J. Munson, Secretary, of Middle Road Investors, Inc., an Iowa Corporation, to me personally known, who being by me duly sworn, did say that they are respectively the President and Secretary of said corporation, that said corporation's seal is attached and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said Robert D. Danico, President, and C. J. Munson, Secretary, severally acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

(Notarial Seal)

Judith L. Moore
Notary Public in and for
Scott County, Iowa.

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EXHIBIT D-8

CERTIFICATE OF COUNTY RECORDER

I, Clarence E. Hagen, Recorder of Scott County, Iowa, do hereby certify that the title in fee to the land covered by the plat hereto attached, known and designated as Block 1 of the Quad City Technological Center, a Planned Unit Development to the City of Bettendorf, Iowa, is in Middle Road Investors, Inc. and that said title is free from encumbrances.

Witness my hand and seal of my office hereunto affixed this 3rd day of April, A.D., 1973.

Clarence E. Hagen
Clarence E. Hagen, Recorder

By: _____
Deputy

CERTIFICATE OF CLERK OF DISTRICT COURT

I, David H. Dahlin, Clerk of the District Court of the State of Iowa in and for Scott County, hereby certify that the land covered by the annexed plat known and designated as Block 1 of Quad City Technological Center, a Planned Unit Development, to the City of Bettendorf, Iowa, is free from all judgments, attachments, mechanic's liens, or other liens, as appears by the records of my office.

Witness my hand and the official seal of my office this 3rd day of April, A.D., 1973.

_____
Clerk

EXHIBIT D-9

CERTIFICATE OF COUNTY TREASURER

I, Ken W. Gaines, Treasurer of Scott County, Iowa, hereby certify that the land laid out into a Planned Unit Development covered by the plat hereto attached, known and designated as Quad City Technological Center to the City of Bettendorf, Iowa, is free from taxes payable to Scott County, Iowa.

Witness my hand this 3rd day of April, A.D., 1973.

Ken W. Gaines
Ken W. Gaines Treasurer

By: M. L. Irwin
M.L. Irwin Deputy

CERTIFICATE OF ATTORNEY AT LAW

I, Don Douglas Thuline, Attorney at Law, do hereby certify that I have examined the abstract of title to the land embraced in the attached plat and described in the accompanying certificate of William A. Fell, registered land surveyor, and from such examination find that Middle Road Investors, Inc. has good fee simple title to said real estate and that said land is free from encumbrances.

Dated at Bettendorf, Iowa, this 3rd day of April, A.D., 1973.

Don T. Thuline

EXHIBIT D-10

CERTIFICATE AND DEDICATION OF OWNERS

This is to certify that the attached Plat of Block 1 of "Quad City Technological Center" a Planned Unit Development in and for the City of Bettendorf, Iowa, is hereby made with the free consent of Middle Road Investors, Inc. as owner and proprietor of the real estate described upon the foregoing and attached Plat and the Surveyor's Certificate thereto attached and certifies that said Plat is made in accordance with the desire of said proprietor and said proprietors do hereby dedicate to the use of the public any and all rights it may have in and to Commerce Drive as shown on the plat.

NOW THEREFORE, Middle Road Investors, Inc. hereby declares that the real property described in the surveyor's certificate is and shall be held, transferred, sold, conveyed and occupied subject to the restrictive and protective covenants.

IN WITNESS WHEREOF, Middle Road Investors, Inc. has caused this instrument to be executed by its President, attested to by its Secretary and its corporate seal attached hereto this 3rd day of April, A.D., 1973.

MIDDLE ROAD INVESTORS, INC.

By: _____
Robert D. Danico President

EXHIBIT D-11

1 of 6

IOWA STATE BAR ASSOCIATION
Official Form No. 7

10521-76

WARRANTY DEED

(CORPORATE)

1976 JUN 18 PM 4:11

Recording Fee $ 2.50
Transfer Fee $ 1.00

FEE $3.50 Paid
RECORDER

Know All Men by These Presents:

That CITY OF BETTENDORF, IOWA, A Municipal Corporation SCOTT COUNTY, IOWA

having its principal place of business at Bettendorf in Scott County and State of Iowa, a corporation organized and existing under the laws of Iowa, in consideration of the sum of One and no/100 $1.00 Dollar and other good and valuable consideration

in hand paid does hereby CONVEY unto MIDDLE ROAD INVESTORS, INC.

Grantees' Address

the following described real estate situated in Scott County, Iowa, to-wit:

A tract of land in Northeast Quarter of Section 21, Township 78 North, Range 4 East of the 5th P.M. in Bettendorf, Scott County, Iowa more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 21; thence due South along the East line of the Northeast Quarter of said Section 21 a distance of 1384.53 feet to the Northerly R.O.W. of Middle Road; thence South 53° 45' 45" West along the Northerly R.O.W. of Middle Road a distance of 85.12 feet to a point of curvature; thence Westerly along a 15.00 foot radius curve concave Northerly a distance of 23.32 feet to a point of reverse curvature; thence Northwesterly along the Northerly R.O.W. of Commerce Drive and along a 919.45 foot radius curve concave Southwesterly a distance of 341.47 feet to a point of tangency; thence North 58° 25' 15" West along the Northerly R.O.W. of Commerce Drive a distance of 47.11 feet to the Point of Beginning; thence Southwesterly along the R.O.W. of Tech Drive and along a 497.75 foot radius curve concave Westerly a distance of 3.88 feet to a point of compound curvature; thence Westerly along a 15.00 foot radius curve concave Northwesterly a distance of 23.47 feet to a point of tangency; thence North 58° 25' 15" West along the Northerly R.O.W. of Commerce Drive a distance of 447.86 feet to a point on the Westerly Addition line; thence North 04° 06' 15" East a distance of 150.00 feet along the Westerly line of the Quad City Technological Center Addition; thence South 54° 10' 00" East a distance of 569.47 feet to a point on the Westerly R.O.W. of Tech Drive; thence Southwesterly along a 497.75 foot radius curve concave Westerly a distance of 47.38 feet to the POINT OF BEGINNING, containing 2.492 acres.

[illegible] Parcel B, [illegible] of the Contract between the parties hereto dated [illegible]

[illegible] and Covenants herein contained, the said party of the first part does hereby covenant with the said party of the second part, [illegible] that it has good and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever, except as may be above stated; and it covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, according to the context.

IN WITNESS WHEREOF said corporation has caused this instrument to be duly executed this 16th day of June, A.D. 19 76

The liens of special assessment for CITY OF BETTENDORF, IOWA the subdivision improvements mentioned in said contract are hereby released against the above described real estate with the liens to remain against the remaining property under said contract which has not been released. Also released against said real [illegible] the special assessments for Middle Road Sidewalks and Maplecrest Paving. This conveyance is exempt from the real estate transfer tax. Iowa Code 428A.2.

William C. Glynn, Mayor

James W. Brisch, City Clerk

Grantees' Address

STATE OF IOWA, SCOTT COUNTY, ss:

On this 16th day of May, A.D. 19 76, before me the undersigned, a Notary Public in and for said County and said State, personally appeared William C. Glynn and James W. Brisch, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk respectively of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said William C. Glynn and James W. Brisch as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

ROBIN T. BUNGER, Notary Public in and for the said County and said State.

My Commission Expires [illegible]

EXHIBIT E

10530-76

FILED JUN 18 PM 4:12

WARRANTY DEED

CORPORATE

FEE $3.00 Paid
RECORDED Book 2 Page
SCOTT COUNTY, IOWA

Know All Men by These Presents:

That MIDDLE ROAD INVESTORS, INC.

having its principal place of business at Bettendorf in Scott County and State of Iowa, a corporation organized and existing under the laws of Iowa, in consideration of the sum of One and no/100 ($1.00) Dollar and other good and valuable consideration

the receipt of which is hereby acknowledged, does hereby CONVEY unto Robert H. Yerman and Rose Yerman, husband and wife, as tenants in common, and to their heirs and assigns,

Grantees' Address 2907 37th Street, Rock Island, Illinois 61201

the following described real estate situated in Scott County, Iowa, to-wit:

A tract of land in Northeast Quarter of Section 31, Township 78 North, Range 4 East of the 5th P.M., in Bettendorf, Scott County, Iowa more particularly described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 31; thence due South along the East line of the Northeast Quarter of said Section 31 a distance of 1644.93 feet to the Northerly R.O.W. of Middle Road; thence South 53° 45' 45" West along the Northerly R.O.W. of Middle Road a distance of 80.12 feet to a point of curvature; thence Westerly along a 15.00 foot radius curve concave Northerly a distance of 23.32 feet to a point of reverse curvature; thence Northwesterly along the Northerly R.O.W. of Commerce Drive and along a 918.45 foot radius curve concave Southwesterly a distance of 348.07 feet to a point of tangency; thence North 59° 25' 12" West along the Northerly R.O.W. of Commerce Drive a distance of 47.11 feet to the Point of Beginning; thence Southwesterly along the R.O.W. of Tech Drive and along a 497.75 foot radius curve concave Westerly a distance of 2.00 feet to a point of compound curvature; thence Westerly along a 15.00 foot radius curve concave Northwesterly a distance of 23.47 feet to a point of tangency; thence North 59° 25' 12" West along the Northerly R.O.W. of Commerce Drive a distance of 447.06 feet to a point on the Westerly Addition line; thence North 00° 06' 10" East a distance of 230.06 feet along the Westerly line of the Quad City Technological Center Addition; thence South 34° 39' 09" East a distance of 569.47 feet to a point on the Westerly R.O.W. of Tech Drive; thence Southwesterly along a 497.75 foot radius curve concave Westerly a distance of 156.10 feet to the POINT OF BEGINNING, containing 3.492 acres. *

And said Corporation hereby covenants with said grantees, and successors in interest, that it holds said real estate by title in fee simple; that it has good and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever, except as may be above stated; and it covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

* Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, according to the context.

IN WITNESS WHEREOF said corporation has caused this instrument to be duly executed this 16th day of June, 19 76.

Subject to restrictive covenants MIDDLE ROAD INVESTORS, INC.
reserved in Doc. #3384-72; R.O.W. Agreement, Doc. #2-1-72; Right of Way Agreement, Doc. #2-1-72; Right of Way Agreement, Doc. #2-1-72; Right of Way

radius curve concave Northwesterly a distance of 23.47 feet to a point of tangency; ther North 58° 25' 11" West along the Northerly R.O.W. of Commerce Drive a distance of 44 feet to a point on the Westerly Addition line; thence North 00° 06' 19" East a distance of 250.00 feet along the Westerly line of the Quad City Technological Center Addition; ther South 54° 19' 09" East a distance of 569.47 feet to a point on the Westerly R.O.W. of T Drive; thence Southwesterly along a 497.75 foot radius curve concave Westerly a distan 156.18 feet to the POINT OF BEGINNING, containing 2.492 acres. *

And said Corporation hereby covenants with said grantees, and successors in interest, that it holds said real estate by title in fee simple; that it has good and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever, except as may be above stated; and it covenants to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, according to the context.

IN WITNESS WHEREOF said corporation has caused this instrument to be duly executed this 16th day of June, 19 76.

~~Subject to restrictive covenants recorded as Doc. # 5134-73, S.C. Iowa Rec. Off. Subject to a drainage easement over the rear 35' and to an electrical easement over the Westerly 15' of said real estate.~~ Subject to a sanitary sewer easement 20 feet in width, the center line of which is 263.07 feet measured along the North line of Commerce Drive for the Southwest corner of said real estate, thence on a line running North 31°34' 50" East to the North line of said real estate.

MIDDLE ROAD INVESTORS, INC.

By Robert D. Danico President
Robert D. Danico Title

By C. J. Munson Secretary
C. J. Munson Title

1630 State Street

Bettendorf, Iowa 52722
(Grantors' Address)

STATE OF IOWA, SCOTT COUNTY, ss

On this 16th day of June A.D. 1976 before me, the undersigned, a Notary Public in and for said County and said State, personally appeared Robert D. Danico and C. J. Munson to me personally known, who, being by me duly sworn, did say that they are the President and Secretary respectively, of said corporation; that (no seal affixed thereto is the seal of said corporation) that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and that the said Robert D. Danico and C. J. Munson as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

Judith L. Moore Notary Public in and for said County and said State

R-6668 CORPORATE SEAL

EXHIBIT E

IOWA STATE BAR ASSOCIATION
Official Form No. 1.1

WARRANTY DEED

Know All Men by These Presents: That ROBERT H. VERSMAN and ROSE VERSMAN, husband and wife,

of the sum of ONE DOLLAR ($1.00) and other valuable consideration in consideration

in hand paid do hereby Convey unto the following individuals, an undivided 1/12 interest, in the real estate legally described on the attached Exhibit "A", which is made a part hereof by this reference thereto: KENNETH J. VERSMAN, LINDA JEAN VERSMAN, STUART J. HELLER, JUDITH LEE HELLER, FREDERICK J. GLASSMAN, and FRANCES BELLE GLASSMAN

Grantees' Address: See (*) below

the following described real estate, situated in Scott County, Iowa, to-wit:

(*) Kenneth J. and Linda Jean Versman
5144 South Jamaica Way
Englewood, CO 80111

Stuart J. and Judith Lee Heller
3235 South Gregg Court
Denver, CO 80210

Frederick J. and Frances Belle Glassman
17256 Luverne Place
Encino, CA 91316

25349-86

'86 DEC 31 PM 2:48

Fee $15.00 paid

SUBJECT TO: 1. Easements, covenants and restrictions of record.

Transfer Fee $ 5.00
Recording Fee $ 10.00

EXEMPT FROM IOWA TRANSFER TAX STAMPS BY VIRTUE OF IOWA CODE §428A.1. THERE IS NO CONSIDERATION FOR THIS CONVEYANCE

And the grantors do Hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple; that they have good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances Whatsoever except as may be above stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the described premises.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 23rd day of December 1986

Robert H. Versman
ROBERT H. VERSMAN

Rose Versman
ROSE VERSMAN

STATE OF ILLINOIS
ROCK ISLAND COUNTY, ss:

On this 23 day of December, 19 86, before me, the undersigned, a Notary Public in and for said State, personally

EXHIBIT F

WARRANTY DEED

Know All Men by These Presents: That ROBERT B. VERSMAN and ROSE VERSMAN, husband and wife, as Grantors,

of the first part, for and in consideration of the sum of ONE DOLLAR ($1.00) and other valuable considerations

in hand paid do hereby Convey unto EDWARD J. VERSMAN, LINDA JEAN VERSMAN, STUART J. BELLER, JUDITH LEE BELLER, FREDERICK J. CLAUSSEN, and FRANCES BELLE CLAUSSEN, each undivided 1/4 thereof as TENANTS IN COMMON, the following described real estate, situated in Scott County, Iowa, to-wit:

The legal description is attached hereto as Exhibit "A" and made a part hereof by this reference.

GRANTEES' ADDRESS: Kenneth J. and Linda Jean Versman
5144 South Jamaica Way
Englewood, CO 80111

Stuart J. and Judith Lee Beller
1235 South Gropp Court
Denver, CO 80219

Frederick J. and Frances Belle Claussen
17756 Lorraine Place
Encino, CA 91316

1735-87

EST JAN 28 PM 3:00

$11.00 Paid

RECORDER'S
BOOK PAGE

Transfer Fee $.50

Recording Fee $5.00

SUBJECT TO: Easements, covenants and restrictions of record.

EXEMPT FROM IOWA TRANSFER TAX STAMPS BY VIRTUE OF IOWA CODE SECTION 428.1. THERE IS NO CONSIDERATION FOR THIS CONVEYANCE.

This Warranty Deed confirms the deed executed by the Grantors on December 23, 1986, recorded in the Scott County Recorder's office as Document No. 25343-86, and ratifies and approves the conveyance of a total of one-half of the real property legally described in Exhibit "A" hereto.

And the grantors do hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple; that they have good and lawful authority to sell and convey the same; that said premises are free and Clear of all Liens and Incumbrances, Whatsoever, except as herein stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the described premises.

Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender according to the context.

Dated this 24th day of December, 1986.

Robert B. Versman
ROBERT B. VERSMAN

Rose Versman
ROSE VERSMAN

STATE OF ILLINOIS
ROCK ISLAND COUNTY, ss:

On this 24th day of December, 1986, before me, the undersigned, a Notary Public, in and for said State, personally appeared ROBERT B. VERSMAN and ROSE VERSMAN, husband and wife

to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

1360 Kimberly Ridge Road
Bettendorf, IA 52722

Ellen K. Peete
Ellen K. Peete
Notary Public in and for the State of Illinois

EXHIBIT G

IOWA STATE BAR ASSOCIATION — FOR THE LEGAL EFFECT OF THE USE OF THIS FORM, CONSULT YOUR LAWYER

WARRANTY DEED

Know All Men by These Presents: That ROBERT H. VERSMAN and ROSE VERSMAN, husband and wife, as Grantors,

in consideration of the sum of ONE DOLLAR ($1.00) and other valuable considerations in hand paid do hereby Convey unto KENNETH J. VERSMAN, LINDA JEAN VERSMAN, STUART J. HELLER, JUDITH LEE HELLER, FREDERICK J. GLASSMAN, and FRANCES BELLE GLASSMAN, each receiving an undivided one-twelfth interest, for a total conveyance of one-half of

Grantees, husband and wife

the following described real estate, situated in Scott County, Iowa:

The legal description is attached hereto as Exhibit "A" and made a part hereof by this reference.

1735-87

FILED JAN 28 PM 3 01

GRANTEES' ADDRESS: Kenneth J. and Linda Jean Versman
5144 South Jamaica Way
Englewood, CO 80111

Stuart J. and Judith Lee Heller
3235 South Gregg Court
Denver, CO 80210

Frederick J. and Frances Belle Glassman
17256 Laverne Place
Encino, CA 91316

SUBJECT TO: Easements, covenants and restrictions of record.

EXEMPT FROM IOWA TRANSFER TAX STAMPS BY VIRTUE OF IOWA CODE SECTION 428A.1. THERE IS NO CONSIDERATION FOR THIS CONVEYANCE.

This Warranty Deed confirms the deed executed by the Grantors on January 2, 1987, recorded in the Scott County Recorder's office as Document No. 165-87, and ratifies and approves the conveyance of a total of one-half of the real property legally described in Exhibit "A" hereto.

And the grantors do Hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple; that they have good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances Whatsoever except as may be above stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the described premises.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender according to the context.

Signed this 3rd day of January, 1987.

STATE OF ILLINOIS,
ROCK ISLAND COUNTY, ss:

On the 3rd day of January, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT H. VERSMAN and ROSE VERSMAN, husband and wife.

Robert H. Versman
ROBERT H. VERSMAN

Rose Versman
ROSE VERSMAN

1360 Kimberly Ridge Road
Bettendorf, IA 52722

EXHIBIT H

EXHIBIT A

A tract of land in Northeast quarter of Section 21, Township 78 North, Range 4 East of the 5th P.M. in Bettendorf, Scott County, Iowa more particularly described as follows: Commencing at the Northeast Corner of the Northeast Quarter of said Section 21; thence due South along the East line of the Northeast Quarter of said Section 21 a distance of 1564.93 feet to the Northerly R.O.W. of Middle Road; thence South 53° 44' 45" West along the Northerly R.O.W. of Middle Road a distance of 85.32 feet to a point of curvature; thence Westerly along a 15.00 foot radius curve concave Northerly a distance of 23.32 feet to a point of reverse curvature; thence Northwesterly along the Northerly R.O.W. of Commerce Drive and along a 919.45 foot radius curve concave Southwesterly a distance of 341.47 feet to a point of tangency; thence North 58° 25' 11" West along the Northerly R.O.W. of Commerce Drive a distance of 47.11 feet to the Point of Beginning; thence Southwesterly along the R.O.W. of Tech Drive and along a 497.75 foot radius curve concave Westerly a distance of 3.00 feet to a point of compound curvature; thence Westerly along a 15.00 foot radius curve concave Northwesterly a distance of 23.47 feet to a point of tangency; thence North 58° 25' 11" West along the Northerly R.O.W. of Commerce Drive a distance of 447.09 feet to a point on the Westerly Additlon line; thence North 00° 06' 19" East a distance of 250.00 feet along the Westerly line of the Quad City Technological Center Addition; thence South 54° 19' 09" East a distance of 569.47 feet to a point on the Westerly R.O.W. of Tech Drive; thence Southwesterly along a 497.75 foot radius curve concave Westerly a distance of 156.18 feet to the POINT OF BEGINNING, containing 2.492 acres, subject to a sanitary sewer easement 30 feet in width, the center line of which is 263.07 feet measured along the North line of Commerce Drive for the Southwest corner of said real estate, thence on a line running North 31° 24' 50" East to the North line of said real estate. Subject to easements, covenants and restrictions of record.

ALSO DESCRIBED AS FOLLOWS:

PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 21 TOWNSHIP 78 NORTH, RANGE 4 EAST OF THE 5TH PRINCIPAL MERIDIAN IN SCOTT COUNTY IOWA.

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 21. THENCE SOUTH 00°0'00" EAST, A DISTANCE OF 744.06 FEET TO THE NORTH RIGHT-OF-WAY FOR P.V.D. DRIVE (52'R.O.W.); THENCE SOUTH 71°25'13" WEST ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 291.00 FEET; THENCE 22.30 FEET ALONG A CURVE CONCAVE NORTHEASTERLY WITH A RADIUS OF 15.00 FEET, A CHORD BEARING NORTH 65°59'29" WEST, AND A CHORD DISTANCE OF 20.30 FEET TO THE EAST RIGHT-OF-WAY FOR TECH DRIVE (52'R.O.W.); THENCE SOUTH 64°37'48" WEST, A DISTANCE OF 52.00 FEET TO THE WEST RIGHT-OF-WAY OF TECH DRIVE; THENCE ALONG THE WEST RIGHT-OF-WAY THE FOLLOWING THREE COURSES: THENCE 172.94 FEET ALONG A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 424.00 FEET, A CHORD BEARING SOUTH 11°41'05" EAST, AND A CHORD DISTANCE OF 171.74 FEET; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 61.38 FEET; THENCE 117.36 FEET ALONG A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 497.75 FEET, A CHORD BEARING SOUTH 06°44'59" WEST, AND A CHORD DISTANCE OF 116.99 FEET TO THE POINT OF BEGINNING THENCE 160.18 FEET ALONG A CURVE CONCAVE NORTHWESTERLY WITH A RADIUS OF 497.75 FEET, A CHORD BEARING SOUTH 22°43'05" WEST, AND A CHORD DISTANCE OF 159.49 FEET; THENCE 23.47 FEET ALONG A CURVE CONCAVE NORTHWESTERLY WITH A RADIUS OF 15.00 FEET, A CHORD BEARING OF SOUTH 76°45'32" WEST, AND A CHORD DISTANCE OF 21.15 FEET TO THE NORTH RIGHT-OF-WAY OF COMMERCE DRIVE (52'R.O.W.); THENCE ALONG SAID RIGHT-OF-WAY NORTH 58°25'11" WEST, A DISTANCE OF 447.09 FEET; THENCE NORTH 00°06'19" EAST, A DISTANCE OF 250.00 FEET; THENCE SOUTH 54°19'09" EAST, A DISTANCE OF 569.39 FEET TO THE POINT OF BEGINNING CONTAINING 2.26 ACRES (98,446 S.F.) MORE OR LESS AND SUBJECT TO ANY EASEMENTS OF RECORD.

EXHIBIT I

REAL ESTATE TRANSFER TAX PAID 277
STAMPS
319.20
RECORDER
4-24-97
DATE
COUNTY

09482-97
97 APR 24 PM 12:15
REC'D 2100 mil
RECORDER OF DEEDS
SCOTT COUNTY, IOWA

Transfer Fee $ 5.00
Recording Fee $ 11.00

Addition
KH

Prepared by Richard F. Tramble, 2307 Spruce Hills Drive, Bettendorf, IA 52722 319-359-3648

WARRANTY DEED

For the consideration of One Dollar ($1.00) and Other Valuable Consideration, KENNETH J. VERSHAW AND LINDA JEAN VERSHAW, Husband and Wife, STUART J. KELLER AND JUDITH LEE KELLER, Husband and Wife, and FREDERICK J. GLASSMAN AND FRANCES BELLE GLASSMAN, Husband and Wife, do hereby Convey to Planned Parenthood of Greater Iowa, Inc. or Planned Parenthood of Greater Iowa Foundation, Inc., the following described real estate in Scott County, Iowa:

See attached Exhibit A.

And the Grantors do Hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple; that they have good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances Whatsoever except as may be above stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above described premises.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated this 14th day of April, 1997.

KENNETH J. VERSHAW

LINDA JEAN VERSHAW

STUART J. KELLER

JUDITH LEE KELLER

FREDERICK J. GLASSMAN

FRANCES BELLE GLASSMAN

FRI APR 25 1997

EXHIBIT I

APPENDIX C

LAW ENFORCEMENT *MEMORANDUM* OF AMICUS CURIAE JAMES J. CLANCY, DATED NOVEMBER 24, 1999, DOCUMENTING PAST HISTORICAL EVENTS, DISASTROUS RESULTS, CONFUSION AND SERIOUS DETRIMENT SUFFERED BY THE GENERAL PUBLIC AS A RESULT OF THE INTERFERENCE OF THE FEDERAL COURTS WITH THE 10TH AND 11TH AMENDMENT SOVEREIGN POWER OF THE INDIVIDUAL STATES TO REGULATE THE COMMERCIAL SALE, DISTRIBUTION, ETC., OF HARD-CORE PORNOGRAPHY BY CLOSURE OF THE PREMISES AS A COMMON LAW PUBLIC NUISANCE, AS EXEMPLIFIED BY THE U.S. SUPREME COURT'S DECISION IN *HUFFMAN V. PURSUE, LTD.*, 420 U.S. 592, 43 L.ED.2D 482, 95 S.CT. 1200 (1975), REH. DEN., 421 U.S. 971, 44 L.ED.2D 463, 95 S.CT. 1969.

(Reference: *Brief Amicus Curiae of James J. Clancy, etc.*, ... Page 15, line 29.)

The Law Office Of James J. Clancy
9055 La Tuna Canyon Road
La Tuna Canyon, California 91352

(818) 352-2069
FAX (818) 352-6549

November 24, 1999

MEMORANDUM

SUBJECT:

1. ***Los Angeles Times*** news article, dated September 1, 1999, with headline reading "L.A. Economy's Dirty Secret: Porn Is Thriving"; and

2. Mayor Richard Reardon's response to the press that he "wishes the industry was headquartered somewhere else" and that he is "ashamed of the porno industry".

3. **(a)** The use of Orange County Superior Court Exhibits (records) in the form of autoptical proferences (time and motion studies of pornographic films to establish visual proof of Justice Potter Stewart's "phenomenon" [1] that one knows hard-core pornography when he sees it), and **(b)** the use of 11 years of public nuisance abatement adjudications in Santa Ana (1975-1986) (pursuant to which such pornographic films were declared to be hard-core pornography and enjoined by Order of Court) to prove, by example and similitude, the existence of identical moral public nuisances and unlawful business practices in the San Fernando Valley, ***(Excised Line)***.

---

[1] Phenomenon is defined in Webster's Collegiate Dictionary, 5TH Edition, as "any object known through the senses rather than thought or intuition; specifically with Kant, the object of experience.

4. My contention that "closure" is mandated where the visual evidence which is offered is in the form of autoptical proferences; i.e., time and motion studies of films which provide irrefutable proof of hard-core pornography as the sole stock in trade, which is both a common law public nuisance under ***People ex rel. Busch v. Projection Room Theater***, 16 Cal.3d 350 [Mar. 4, 1976], as modified in 17 Cal.3d 42, 130 Cal.Rptr. 328, 550 P.2d 600 [June 1, 1976] and a statutory unlawful business practice under **Business and Profession Code §17200** and ***People v. E.W.A.P., Inc.***, 106 Cal.App.3d 315, 165 Cal.Rptr. 73 (CA2, dv5, 5-29-80) (hearing denied by Cal. Sup. Ct. on Aug. 21, 1980) which can be terminated by a lawsuit brought "by any person acting for the interests of itself, its members or the general public" (my emphasis). **Business and Professions Code §17.204**.

Pursuant to our phone conversation on October 28, 1999, I am personally delivering this Memorandum with its supporting documents, which will corroborate my representations in our September 1, 1999 and October 28, 1999 phone conversations that the present operations of the producers and distributers of "Porno" films and videotapes in the San Fernando Valley can be stopped through legal process.

Both the September 1, 1999 ***Los Angeles Times*** news article (see copy at **Exhibit A** to this Memorandum) and Mayor Reardon's remarks acknowledge that the production and distribution of obscene motion picture films and videotapes is rampant in the City of Los Angeles. The Mayor's remarks imply that there is nothing that the Mayor can do to stop that activity. I do not agree. The Orange County Superior Court records as to the number of injunctions which were issued in 11 years of Public Nuisance Abatement litigation, establish that the contrary proposition is true.

Upon reading the September 1, 1999 ***Los Angeles Times*** news article, I immediately picked up the phone and called to see if it would be possible for you to "access" the Mayor and alert him to the facts **(1)** that he has not been fully advised; and **(2)** that the production and distribution of such pornographic films can be stopped by the use of legal process by any person, pursuant to the **Business and Professions Code**. I stated that if a foundation grant were made available for such purposes, I could, within a relatively short period, prepare and submit a comprehensive study and report ***(Excised Line)*** based upon my 11 years of personal experiences with litigation in Santa Ana, with full documentation by way of autoptical proferences; that is, time and motion studies", which would establish: **(1)** that the production and distribution of such pornographic films and videotapes, identical to those in the litigation in Santa Ana, is both an unlawful business practice and a public nuisance in Los Angeles, and **(2)** that such unlawful business can now be closed down by an Equity Decree under the **Federal Constitution** pursuant to the **11TH Amendment** Sovereign Powers of State Judiciaries to act upon important State matters, and that the proposed Study would outline the steps that need to be taken in the Courtroom to achieve that objective.

(Excised Paragraphs [2][suggested remedy]).

As background, I performed legal services for the City Council of Santa Ana during the 11 year period 1975-1986 in a monumental effort by the City of Santa Ana to close the Mitchell Brothers' Santa Ana Theatre in Honer Plaza (formerly a United Artist's Family Theater) as a moral public nuisance. Unfortunately, at that time, the membership of the U.S. Supreme Court was badly "fragmented" and it was impossible to get the members of the High Court to note jurisdiction and rule on the constitutionality of the "closure" issue. I believe that had we been able to "force" a ruling out of the U.S. Supreme Court, we would have been able to achieve

our Orange County objective in Santa Ana and close the Theatre, based upon past illegal conduct, and the problems that exist today would not have developed.

In the interim 13 years, the balance of power on the High Court has shifted, and that objective can now be achieved, due to the new interpretation recently given to the **11TH Amendment** powers by a majority of five members on the present Court (Rhenquist, Kennedy, Scalia, Thomas and O'Connor) regarding "state sovereignty" and the subject matter jurisdiction of the state judiciary as to important state matters pursuant to the **11TH Amendment**. The recent interest in the **11TH Amendment** as a viable theory regarding state power, gives states new latitude in crafting, and implementing innovative solutions to state law enforcement problems.

In the first four years, (Sep. 1975 - Jun. 21, 1979) of our eleven year Santa Ana operations (1975-1986), the City of Santa Ana surveilled two pornographic films each week and did a comprehensive analysis of the same by the construction of "time and motion studies" and "continuities", as evidence in the form of "autoptical proferences". A list of those films which were named in four public nuisance abatement lawsuits is enclosed with this memo as an appendix to my Status Report to the Santa Ana City Attorney, dated October 28, 1982. See, also, my Status Report to the Santa Ana City Attorney, dated March 24, 1980, at page 5, which identifies four public nuisance abatement lawsuits and the number of pornographic films in each lawsuit as follows:

Lawsuit	Case No.	Period Covered
(Gow I)	25-65-30	October 1975 -
	(filed Nov. 2, 1976)	April 13, 1977
		(24 Programs, 48 films)

Lawsuit	Case No.	Period Covered
(Gow II)	28-12-14 (filed Dec. 20, 1977)	April 13, 1977 - October 19, 1977 (12 Programs, 24 films)
(Gow III)	29-91-83 (filed Oct. 3, 1978)	July 15, 1978 - November 2, 1978 (13 Programs, 26 films)
(Gow IV)	31-55-93 (filed June 21, 1979)	November 2, 1978 - January, 1979 and April, 1979 - August, 1979 (23 Programs, 42 films)

144 Films

The Courtroom litigation during the period 1976-1979 described above involved the defense of one Federal copyright and one Federal Civil Rights lawsuit, and the prosecution of four State Court Public Nuisance Abatement lawsuits in which all 144 pornographic films were adjudicated at hearings on Motions for Preliminary Injunction, to be hard-core pornography and enjoined by the Orange County Superior Court as Common Law Public Nuisances, in violation of the California Obscenity Statutes. Those Superior Court deliberations were affirmed by the Court of Appeal and review was denied by the California Supreme Court. To this date, those adjudications have not been reversed. See, in this regard, the two bound volumes which are enclosed containing copies of the following Eight (8) Status Reports to the Santa Ana City Attorney dated:

April 24, 1979; December 14, 1979; March 24, 1980; May 12, 1980; December 12, 1980; December 31, 1981; October 28, 1982; and June 23, 1986; and other letters.

Thirteen (13) years later, resistance to the dissemination

of such hard-core pornographic videotapes has virtually collapsed. I am enclosing a copy of a pornographic publication (3/4" thick, containing 350 pages), which is published every January and distributed by the Porno Industry in Los Angeles and elsewhere in the U.S., under the title "Adult Video News" (A.V.N.) and "Adult Entertainment Guide", "broadcasting" the hard-core pornographic film titles which are now available in Los Angeles, the identity of the L.A. Producers, and Distributors of such pornographic films, the names of the actors and actresses and the nature of the hard-core pornographic content.

The remarkable part of this change in law enforcement efforts is that almost everyone of the pornographic films which were surveilled in Santa Ana during that 11-year period is named in the A.V.N. Adult Entertainment Guide. See and compare, in this regard, the titles listed in my Status Report to the Santa Ana City Attorney, dated October 28, 1982 (at "Appendix H"), and pages 204-207 of the A.V.N. Adult Entertainment Guide, listing the video titles of the hard-core pornographic "classics" which are available, with a check mark as to those titles which were exhibited and surveilled at the Mitchell Brothers' Theatre during the period October, 1975 - August, 1979 (see copy at **Exhibit B** to this Memorandum), which were the subjects of the Public Nuisance Abatement lawsuits known as Gow I, Gow II, Gow III and Gow IV and enjoined by the Orange County Superior Court as unlawful hard-core pornography, and upheld by the California Court of Appeal and California Supreme Court !

The magazine itself is pornographic. Further, all of the pornographic films listed therein which were held to be hard-core pornography by the Orange County Superior Court are products of an unlawful business practice and subject to abatement in Los Angeles County as public nuisances as a matter of law. To reach this conclusion, ***(Excised Words)*** need only examine the "autoptical proference" (time and motion

study) for each of such films which is under challenge. The City of Santa Ana would not have been able to continue to maintain such lawsuits in the California Courts for 11 successive years without the "time and motion" studies to rely upon, and keep the City of Santa Ana in the courtroom. Such "autoptical proferences" are irrefutable.

I am transmitting two bound volumes of my correspondence and status reports to the Santa Ana City Attorney for the year 1979 and the years 1980 through 1986, on the progress of the Santa Ana lawsuits, containing my analysis of (1) the results achieved in the State and Federal Courts as to each of the above pornographic films and videotapes; (2) the nuisance abatement process (which was upheld by the California Supreme Court in ***People ex rel. Busch v. Projection Room Theater***, supra) (see copy at **Exhibit C** to this Memorandum); (3) the use of that process by seven other States (Washington, Ohio, Idaho, Georgia, Alabama, Texas and North Carolina); and (4) the news accounts of the closing down of the Exxxtasy and Tuxedo Channels on Satellite T.V. by Montgomery, Alabama District Attorney Jimmy Evans in December, 1990, using the "time and motion" and "continuity" studies which our operations prepared in Los Angeles with respect to the pornographic films (which included "The Opening of Misty Beethoven") which were exhibited by the Exxxtasy and Tuxedo Channels via Satellite and broadcast to Montgomery, Alabama and Los Angeles, California, simultaneously (see copy of the correspondence and news accounts of the demise of the Exxxtasy and Tuxedo Channels at **Exhibit D** to this Memorandum).

Each of the pornographic films which were named in those Santa Ana lawsuits was supported by a "time and motion study" which was examined by the City Council Members prior to their voting to authorize a public nuisance abatement lawsuit to be filed on such films. See my letter to the City Attorney, dated May 11, 1979. This was the "key" to our success in the

Courtroom. The use of the "time and motion study", as autoptical evidence ("I know it when I see it" "phenomenon"—with no need to apply a definition and the "reasoning" mind) precluded the Mitchell Brothers from making the obscenity definition an issue or turning the lawsuit into a semantical debate. The Mitchell Brothers candidly admitted in their depositions that they produced and exhibited only hard-core pornography. It would have been impossible for them to argue a plausible contrary proposition or come to a plausible contrary conclusion. For obvious reasons, no injunction was sought by the City of Santa Ana prior to a judicial determination on the merits.

Regretfully, on November 30, 1981, the U.S. Supreme Court refused to grant a hearing on the "closure" issue we had drawn in our primary lawsuit (Gow I). That issue was squarely before the High Court twice on the Santa Ana City ***Petitions for a Writ of Certiorari*** in Case No. 81-271 and Case No. 82-345 (see copy of "Reasons for Granting Review" in 82-345 at **Exhibit E** to this Memorandum). It took that long (5 years) to frame the "closure" issue at trial and get Case No. 81-271 before the High Court on appeal. We did this by getting the Trial Judge to make a finding of fact that he would have closed down the Theatre because of the contents being exhibited (which he described in detail) if the Constitution permitted him to do so under the U.S. Supreme Court decisions. See Status Reports, dated December 31, 1981, at pages 3-4, and October 28, 1982 at pages 1-2. Instead of ruling on the "closure" issue in Case No. 81-271, the U.S. Supreme Court reversed on the burden of proof issue summarily and without briefing or oral arguments, holding that in a civil case, the Equity"clear and convincing" burden of proof was satisfactory, and that the criminal standard of "beyond a reasonable doubt" was not applicable. This posed a real problem for Santa Ana, because the California Supreme Court in ***People ex rel. Busch v. Projection Room Theater***, supra, had refused to consider the "closure" issue on appeal, absent a decision from the U.S.

Supreme Court on the "closure" issue. See Associate Justice Clark, concurring and dissenting in ***People ex rel Busch***, 17 Cal.3d 42 at page 62 (see copy of the ***Busch*** decision at **Exhibit C** to this Memorandum).

In the meantime, a coordinated effort was made to get the "closure" issue before the High Court in one of the seven other State cases, which were pursuing the same remedy (Washington, Ohio, Idaho, Georgia, Alabama, Texas and North Carolina). Those efforts were also unsuccessful.

In ***State of Idaho, ex rel. Kidwell, Attorney General and Leroy, Ada County Prosecuting Attorney v. U.S. Marketing, Inc., et al.***, ___ Idaho ___, 631 P.2d 622 (March 29, 1981), the Idaho Supreme Court reversed the trial court and held that closure was constitutional and authorized the award of attorney fees (see copy of ***State of Idaho, ex rel. Kidwell and Leroy*** at **Exhibit C** to this Memorandum). Upon appeal, the U.S. Supreme Court first noted jurisdiction of those issues, and then vacated that ruling when ***U.S. Marketing, Inc, et al.*** withdrew its appeal voluntarily so as not to have the High Court rule on and uphold the closure issue. ***U.S. Marketing, Inc, et al.*** was ordered to do so by the suppliers who did not want a ruling on that issue. See Status Report, dated December 31, 1981. See also, pages 32-65 at page 36 of the ***Petition for Writ of Certiorari*** in ***Edward Cooper, City Attorney of Santa Ana v. Mitchell Brothers' Santa Ana Theatre, et al.***, No. 82-345, October Term, 1982, which is attached to this Memorandum as **Exhibit E**.

The State case (on lack of subject matter jurisdiction) that came closest to solving Santa Ana's problem with the closure issue (***Carol Vance, et al. v. Universal Amusement Company, Inc., et al.***, No. 78-1588, U.S. Supreme Court, 1978 October Term, 455 U.S. 308 (1978) (involving state sovereignty, the **11TH Amendment** right of the state judiciary to apply the state statute to important state matters, and the issue

of the Federal District Court's "lack of subject matter jurisdiction) was lost by a 5 to 4 decision when Texas Deputy Attorney General Lonny Zwiener gave the wrong answer to Associate Justice Stevens' questioning during oral argument. See my letter to Lonnie Zwiener, dated March 24, 1980. The City of Santa Ana filed an ***Amicus Curiae*** Brief in which it argued that the State of Texas had the right to exclude federal jurisdiction, pending a definitive ruling by the State High Court on the Texas Public Nuisance Statute. During oral argument, Deputy Attorney General Zwiener, without understanding the consequences, innocently volunteered an incorrect statement that the State of Texas did, in fact, employ an interpretation that Justice Stevens felt was flawed. This error at oral argument cost the State the loss of Justice Stevens as a fifth vote, and the High Court's ruling upon the merits of the case, because Zwiener's "concession" during oral argument (which was not a part of the record), in effect, conceded "jurisdiction" and scuttled Santa Ana's ***Amicus Curiae*** argument and claim that the Courts of the State of Texas had not yet ruled definitively on such matters. The State of Texas Petitions had not raised or relied upon the "lack of subject matter" jurisdiction defense, but the Santa Ana ***Amicus*** brief had made it a defense which I was to argue, had Texas been able to arrange time for ***Amicus Curiae*** to argue. The High Court, however, denied Zweiner's motion that he be allowed to split his argument.

After ***Vance***, supra, it became apparent that the "closure" issue would not be ruled upon by the U.S. Supreme Court, absent a second appeal by Santa Ana in one of its later cases (which would have taken years to get the "closure" issue back to the High Court). The City of Santa Ana changed its procedure and started filing a separate action for each new weekly program. This also failed because the Presiding Judge would not give such trials the necessary "priority" and assign a courtroom to try the final injunction issue on a weekly basis. See Status Report to the Santa Ana City Attorney, dated June 23, 1986, at pages 1-6.

Because the High Court would not rule on the "closure" issue and the Santa Ana Superior Court would not assign a Court to try each case weekly on the final injunction, City Attorney Ed Cooper (who had replaced City Attorney Gow) abandoned the courtroom attempt to close down the Theatre by legal action in the courtroom and recommended it be done by eminent domain, incident to a plan of the City to upgrade the area by redevelopment.

In retrospect, it is now apparent that had Assistant Deputy Attorney General Lonny Zweiner argued the "lack of subject matter jurisdiction" in 1982, the ***Vance*** case would have been decided differently and the "closure" issue could have been "forced" upon the U.S. Supreme Court for adjudication in the City's second ***Petition for Writ of Certiorari*** in No. 82-345, which was filed on August 24, 1982.

Today, because of the change in membership of the High Court, and the adoption of a new Court Rule in ***Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.***, 506 U.S. 139, 121 L.Ed.2d 605, 113 S.Ct. 684 (1993) (which permits the **11TH Amendment** issue of "lack of subject matter jurisdiction" of the Federal District Court to be addressed at the commencement of the lawsuit in a pre-trial interlocutory appeal), the defect in the Santa Ana procedures can now be avoided. All that need be done is to apply for "closure" under the public nuisance abatement statutes and, assuming that the defendants remove that issue to the Federal District Court or that they file a Civil Rights action in the Federal District Court based upon the closure remedy, to immediately take an interlocutory appeal (pursuant to ***Puerto Rico Aqueduct and Sewer Authority***, supra, with respect to the federal interference, and the **11TH Amendment**) on the "closure" issue up to the U.S. Supreme Court.

(Excised Paragraph [suggested remedy]).

(Excised lines [suggested remedy]). My Status Report letters to the Santa Ana City Attorney are sequential, comprehensive, "instructive" and accurately state my position which is as valid now as it was in 1979. ***(Excised lines [suggested remedy])***.

(Excised Paragraphs [2] [suggested remedy]).

Inclusion of both the text of my letters and the synopsis "style" have special purposes. Both provide a different degree of proof, each of which is needed to forestall the customary defensive "red herring" arguments and to maximize the probability that the judgment against the Porn Industry will prevail (buttressed by the use of a fully comprehensive report and autoptical evidence to"authenticate" the "summarized" statements of the law").

The federal court's "lack of subject matter jurisdiction" issue under the **11TH Amendment** which I attempted to get Lonny Zweiner to address as his primary issue, is at the very heart of this solution. No one understands that issue and its sand traps and pitfalls as I do, because of my 25 years of involvement with the **11TH Amendment** issue in the intervening years which have followed the argument in the U.S. Supreme Court in ***Huffman v. Pursue, Ltd.***, 420 U.S. 592, 43 L.Ed.2d 482, 95 S.Ct. 1200 (1975), reh. den., 421 U.S. 971, 44 L.Ed.2d 463, 95 S.Ct. 1969.

In my 1979-1980 letters I suggested that we are really involved in a "moral Dunkirk" of our own making. Support for that "concept" can be found in the November 10, 1999 ***L.A. Times*** news article, a copy of which is attached to this letter at **Exhibit A**, involving the staging of a Pornographic "Trade Show" in 1998 at Cal State Northridge.

I am unwilling to admit that our Judaeo-Christian community standards cannot be "recaptured" and "reinstated".

All that need be done is for enough of the "good" people to do that which is needed to restore what is the absolute "truth" under the Natural Law, and to require that the necessary adjustment be made to the law which, presently, is grossly misinterpreted and misunderstood by our "younger generation".